

6-12-2015

Greater Boise Auditorium Dist. v. Frazier Clerk's Record Dckt. 43074

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IN THE SUPREME COURT OF THE STATE OF IDAHO

IN THE MATTER OF:

THE GREATER BOISE AUDITORIUM
DISTRICT,

Petitioner-Appellant,

vs.

DAVID R. FRAZIER,

Respondent.

Supreme Court Case No. 43074

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE LYNN G. NORTON

CHRISTOPHER H. MEYER

ATTORNEY FOR APPELLANT

BOISE, IDAHO

JOHN L. RUNFT

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

In The Matter Of Greater Boise Auditorium District

Date	Code	User	Judge
12/19/2014	PETN	CCBARRSA	Petition for Judicial Confirmation Lynn G Norton
1/14/2015	ANSW	DCKORSJP	Answer to Petition for Judicial Confirmation Lynn G Norton
1/20/2015	NOTC	CCRADTER	Notice of Filing Petition for Judicial Confirmation and Notice of Hearing Thereon Lynn G Norton
	HRSC	CCRADTER	Hearing Scheduled (Hearing Scheduled 02/25/2015 03:00 PM) Hearing on the Petition Lynn G Norton
1/21/2015	STIP	TCLAFFSD	Stipulation Re Briefing Schedule Lynn G Norton
1/26/2015	MEMO	TCLAFFSD	Memorandum In Support Of Petition For Judicial Confirmation Lynn G Norton
	AFFD	TCLAFFSD	Affidavit Of Posting, Mailing & Publishing Of Notice Of Public Hearing And Of Posting And Publishing Notice Of Filing Petition For Judicial Confirmation & Notice Of Hearing Thereon Lynn G Norton
	AFFD	TCLAFFSD	Affidavit Of Linda K Armstrong, As A Representative Of Wells Fargo Bank NA, RE: Petition For Judicial Confirmation Lynn G Norton
	AFFD	TCLAFFSD	Affidavit Of John Brunelle In Support Of Petition For Judicial Confirmation Lynn G Norton
	AFFD	TCLAFFSD	Affidavit Of David Wali In Support of Petition For Judicial Confirmation Lynn G Norton
	AFFD	TCLAFFSD	Affidavit Of Patrick Rice In Support of Petition For Judicial Confirmation Lynn G Norton
2/11/2015	AMEN	CCHOLDKJ	Amended Stipulation RE: Briefing Schedule Lynn G Norton
2/13/2015	BREF	CCHOLDKJ	Respondent's Brief in Opposition to Memorandum in Support of Petition for Judicial Confirmation Lynn G Norton
	AFFD	CCVIDASL	Affidavit of John L Runft in Support of Respondents Brief in Opposition to Memorandum in Support of Petition for Judicial Confirmation Lynn G Norton
2/18/2015	MEMO	CCHOLMEE	Errata Memorandum to Respondent's Brief Lynn G Norton
2/19/2015	AFFD	CCMARTJD	Affidavit of Publishing of Notice of Filing Petition for Judicial Confirmation and Notice of Hearing Lynn G Norton
2/20/2015	AFFD	CCZUBEDK	Supplemental Affidavit of Patrick Rice in Support of Petition for Judicial Confirmation Lynn G Norton
	AFFD	CCZUBEDK	Supplemental Affidavit of John Brunelle In Support Of Petition for Judicial Confirmation Lynn G Norton
	REPL	CCZUBEDK	Reply Memorandum to Respondents Brief in Opposition to the Memorandum In Support of Petition for Judicial Confirmation Lynn G Norton
2/25/2015	DCHH	DCKORSJP	Hearing result for Hearing Scheduled scheduled on 02/25/2015 03:00 PM: District Court Hearing Held Court Reporter: Penny Tardiff Number of Transcript Pages for this hearing estimated: Less than 100 Hearing on the Petition Lynn G Norton
3/23/2015	ORDR	DCKORSJP	Order Denying Petition for Judicial Confirmation Lynn G Norton

In The Matter Of Greater Boise Auditorium District

Date	Code	User	Judge
3/23/2015	CDIS	DCKORSJP	Civil Disposition entered for: Frazier, David, Other Party; Greater Boise Auditorium District,, Subject. Filing date: 3/23/2015
	STAT	DCKORSJP	STATUS CHANGED: Closed
4/6/2015	JDMT	DCKORSJP	Judgment
	MOTN	CCBOYIDR	Respondent's Motion for Attorney Fees and Costs
	AFFD	CCBOYIDR	Affidavit of John L Runft in Support of Motion for Attorney Fees and Costs
	MEMO	CCBOYIDR	Respondent's Memorandum in Support of Motion for Attorney Fees and Costs
4/8/2015	AMEN	TCLAFFSD	Respondent's Amended Motion for Attorney Fees and Costs
	NOTH	TCLAFFSD	Notice Of Hearing
	HRSC	TCLAFFSD	Hearing Scheduled (Hearing Scheduled 05/07/2015 02:45 PM) Amended Motion For Attorney Fees & Costs
	STAT	TCLAFFSD	STATUS CHANGED: Closed pending clerk action
4/20/2015	MOTN	CCHEATJL	Petitioner's Motion To Disallow Costs and Attorney Fees
	MEMO	CCHEATJL	Memorandum In Support Of Peititioner's Motion To Disallow Costs And Attorney Fees
4/24/2015	NOTA	CCBARRSA	NOTICE OF APPEAL
	APSC	CCBARRSA	Appealed To The Supreme Court
5/4/2015	MOTN	CCSNELNJ	Respondant's Reply to Petitoners Motion Opposing Respondant's Motion for Attorney Fees and Costs
5/7/2015	DCHH	DCKORSJP	Hearing result for Hearing Scheduled scheduled on 05/07/2015 02:45 PM: District Court Hearing Held Court Reporter: Susan Gambee Number of Transcript Pages for this hearing estimated: Less than 100 Amended Motion For Attorney Fees & Costs
5/8/2015	ORDR	DCKORSJP	Order Denying in Part Objection to Fees and Costs
	STAT	DCKORSJP	STATUS CHANGED: closed
5/12/2015	MOTN	CCHOLDKJ	Motion for Additions to the Clerk's Record on Appeal Pursuant to I.A.R 28 and 29
5/28/2015	MOTN	CCGRANTR	Motion for Further Additions to the Clerk's Record on Appeal Pursuant to IAR 19(c) and 28(c)
	STIP	CCGRANTR	Stipulation for Further Additions to Clerk's Record Appeal Pursuant to IAP 19(c) and 28(c)
6/12/2015	ORDR	DCKORSJP	Order Granting Further Additions to the Clerk's Record on Appeal

000003

Date: 6/12/2015

Fourth Judicial District Court - Ada County

User: TCWEGEKE

Time: 10:49 AM

ROA Report

Page 3 of 3

Case: CV-OT-2014-23695 Current Judge: Lynn G Norton

In The Matter Of Greater Boise Auditorium District

In The Matter Of Greater Boise Auditorium District

Date	Code	User	Judge
6/12/2015	ORDR	DCKORSJP	Corrected Order Denying in Part Objection to Fees & Costs Lynn G Norton
	NOTC	TCWEGEKE	Notice of Transcript Lodged - Supreme Court No. 43074 Lynn G Norton

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NO _____
A.M. _____ P.M. 4:50

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DEC 19 2014

CHRISTOPHER D. RICH, Clerk
By SANTIAGO BARRIOS
DEPUTY

Nicholas G. Miller, ISB No. 3041
S.C. Danielle Quade, ISB No. 6363
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 W. Main Street, Suite 1000
Boise, ID 83702-5883
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Facsimile: (208) 954-5285

Attorneys for Petitioner
Greater Boise Auditorium District

LYNN G. NORTON

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF:

GREATER BOISE AUDITORIUM
DISTRICT,

PETITIONER.

CV 07 1423695

Case No. _____

PETITION FOR JUDICIAL
CONFIRMATION

Petitioner, Greater Boise Auditorium District, a public body organized and operating as an auditorium district pursuant to Idaho Code Title 67, Chapter 49 (the "Petitioner"), by and through its counsels of record Givens Pursley LLP and Hawley Troxell Ennis & Hawley LLP, petitions this Court, pursuant to Idaho Code § 7-1304, for a judicial examination and determination of the validity of, and authority of Petitioner to enter into, a lease agreement to finance the acquisition of certain condominium units containing a new ballroom facility, related

PETITION FOR JUDICIAL CONFIRMATION - 1

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kitchen and ancillary facilities along with related soft costs and equipment (the “Financed Project”), to improve and expand its existing convention center and public event facilities in downtown Boise (the “Boise Centre”). The Petitioner estimates that the cost of acquiring the Financed Project will be approximately \$19,091,084, plus related soft costs and equipment, for a total Financed Project cost of approximately \$21,236,400 plus related reserves and financing costs. In support thereof, Petitioner (also hereinafter referred to as “District”) represents as follows:

I.

JURISDICTION

1. This petition is made by Petitioner pursuant to the Idaho Judicial Confirmation Law, Idaho Code §§ 7-1301-1313, inclusive.

2. This action is in the nature of a proceeding in rem, and jurisdiction of all parties interested will be obtained by publication and posting as provided in Sections 7-1305 and 7-1306, Idaho Code.

II.

PRELIMINARY ALLEGATIONS

A. Background

3. The District is a public body organized, existing and operating as an auditorium district pursuant to Title 67, Chapter 49 of the Idaho Code, as amended (the “Act”), and as such is a “political subdivision” within the definition contained in Idaho Code § 7-1303(6).

4. The District was formed effective June 9, 1959 by the vote of the electorate of Ada County and encompasses the boundaries of approximately the city limits of the City of Boise, the City of Garden City and portions of the City of Meridian and the City of Eagle, and of Ada County lying east of Eagle Road, south of Floating Feather Road, west of the conjunction of Warm Springs Avenue and Gowen Road, and north of Columbia Road.

5. The District levies and collects hotel/motel room sales tax in the amount of five percent of the receipts derived from hotels and motels within the District, pursuant to Idaho Code § 67-4917B.

6. The District currently operates the Boise Centre, an 85,000 square foot convention center and public event facility in downtown Boise.

B. District Powers

7. The Act authorizes the District to acquire, operate and maintain public convention and auditorium facilities within the boundaries of the District and provides that the District is governed by a Board of Directors elected at large by the voters residing within the boundaries of the District (the “Board”). The Board exercises management, control and supervision of all the business and affairs of the District.

8. The District is empowered by Idaho Code § 67-4912(f) to “acquire, dispose of and encumber real and personal property, and any interest therein, including leases and easements within said district.”

9. The District is also empowered by Idaho Code §67-4922A as follows:

[An Auditorium District] board may contract for the leasing of improvements to be constructed upon premises owned by the district or otherwise, and the contract may also provide that at the expiration of the term of the lease, upon full performance of such lease by the district, the improvements and/or real estate, or so much thereof as is leased, may become the property of the district.

10. Idaho Code § 67-4912(d) provides that the District may enter into contracts and agreements with other governmental entities and cooperate with one or more of them to build, erect, market, or construct facilities within the District.

11. Idaho Code § 50-2015 further authorizes the District to dedicate, sell, convey or lease any of its respective property to an urban renewal agency, to incur the entire expense of public improvements for an urban renewal project, and to enter into any such sale, conveyance,

lease or agreement with an urban renewal agency without appraisal, public notice, advertisement, or public bidding.

C. The Financed Project

12. The District, in accordance with the Act, desires to finance the acquisition of the Financed Project, to be operated by the District as an addition to the Boise Centre.

13. The District has entered into an Amended and Restated Master Development Agreement (the “Gardner MDA”) with K.C. Gardner Company, L.C. (the “Developer”) under which the Developer will build-to-suit the Financed Project as condominium units in a new building, to be known as the “Centre Building,” to the south of the existing U.S. Bank office tower, and will also build-to-suit meeting space and ancillary facilities as a condominium unit in a new building to the west of the U.S. Bank office tower to be known as the “Clearwater Building.” Said build-to-suit meeting space and ancillary facilities located in the Clearwater Building are included in the Gardner MDA, but are not part of the Financed Project.

14. The District has entered into an Amended and Restated Development Agreement (the “Development Agreement”) with the Urban Renewal Agency of Boise City, Idaho, aka Capital City Development Corporation (the “Agency”), pursuant to which the Agency has agreed to employ certain of its statutory powers in connection with the financing of the Financed Project. The Development Agreement is attached hereto as **Exhibit A**, and incorporated herein.

15. The Agency is an urban renewal agency of the City of Boise City, Idaho, organized and operating pursuant to Title 50, Chapters 20 and 29, Idaho Code. Under Section 50-2012, Idaho Code, the Agency may issue notes secured with the income, proceeds, revenues and funds of the Agency derived from the project financed and may mortgage any urban renewal project so financed.

16. Pursuant to the Gardner MDA, upon satisfaction of certain conditions, including agreement on the final design and guaranteed maximum price, which is estimated to occur in May 2015, the District will enter into a Purchase Agreement with the Developer for the purchase of the Financed Project (the "Purchase Agreement") under which the District will be obligated to purchase the Financed Project upon, but not before, completion.

D. Plan of Finance

17. Pursuant to the Development Agreement, the District and the Agency have agreed that the District will assign, and the Agency will accept the assignment of, the District's right to purchase the Financed Project under the Purchase Agreement, and the District and the Agency will execute and deliver an Assignment and Assumption Agreement in substantially the form attached to the Development Agreement (the "Assignment") to so provide. Following successful completion of the Judicial Confirmation Proceedings and the issuance of a lease revenue note to provide the funds needed for the purchase, as described below, the Agency will purchase the Financed Project from the Developer pursuant to the Purchase Agreement and the Assignment and thereby the Agency shall become the owner of the Financed Project.

18. The Agency will then lease the Financed Project to the District under a Lease Agreement (Annual Appropriation) (the "Lease Agreement"), in substantially the form attached hereto as **Exhibit B**, and incorporated herein.

19. The Lease Agreement is subject to annual appropriation and budgeting of funds by the District. The initial term of the Lease Agreement begins on the "Commencement Date" as defined in the Lease Agreement and will end at the conclusion of the District's fiscal year, November 30, following the Commencement Date. The Lease Agreement is renewable annually only upon appropriation, budgeting and affirmative notice of the intent to renew the Lease

Agreement by the District. In this regard, Section 5.1 of the Lease Agreement states, in pertinent part:

(b) At any time during the Initial Term and during each Renewal Term thereafter, the District may, in its sole discretion, renew this Lease for the next subsequent Renewal Term by budgeting funds to pay Rent for such Renewal Term and by giving Notice of Intent to Renew to the Agency. The Notice of Intent to Renew shall be accompanied by a certified copy of the resolution or other official action of the District Board adopting its budget which includes the expenditure of funds for Rent for the Renewal Term. In the event the Agency shall not have received the Notice of Intent to Renew by November 1 of any year, the Agency will notify the District of such non-receipt, and the District shall then have until November 15 to deliver to the Agency its Notice of Intent to Renew.

(c) If the District does not deliver the Notice of Intent to Renew by November 15 of any year, or if the District shall at any time notify the Agency that the District has elected to not renew this Lease for an additional Renewal Term, an Event of Nonrenewal shall be deemed to have occurred. Upon an Event of Nonrenewal, the Lease shall terminate on November 30 of the then current year and, except for the provisions of Section 8.12 herein, no provision of the Lease shall survive termination.

20. In order to ensure that all obligations under the Lease Agreement are terminated in an Event of Nonrenewal (as described in paragraph 25 hereof) the District has committed, as required by Section 8.12 of the Lease Agreement, the amount of \$250,000 to be held in a "Lease Contingency Fund" as the sole source of payment for all claims of the Agency under the Lease Agreement, including such claims as may survive the District's termination of the Lease Agreement. The Agency has no other recourse against the District except to such Fund. If funds remain in the Lease Contingency Fund five (5) years after the termination of the Lease, such funds shall be released to the District.

21. On December 11, 2014, the Agency and the District received a revised term sheet (the "Term Sheet") from Wells Fargo Bank, N.A., Boise office ("Wells Fargo") specifying the terms and conditions upon which Wells Fargo would purchase the Note and provide financing for the Financed Project plus related reserves and financing costs. The Agency approved the Term Sheet and authorized the execution of the same at the meeting of its governing board held

on December 15, 2014. The District ratified the execution of the Term Sheet at the meeting of its Board held on December 18, 2014. A copy of the executed Term Sheet is attached hereto as **Exhibit C**, and incorporated herein.

22. The Term Sheet calls for the Agency to issue a Lease Revenue Note (the “Note”), to be repaid by the Agency solely from lease payments payable by the District to the Agency under the Lease Agreement (the “Lease Payments”) and provides that the Agency will grant a first lien on the Financed Project (subject to the District’s Option to Purchase as described in paragraph 26 hereof) pursuant to a Deed of Trust and Assignment of Rents to secure repayment of the Note. The Term Sheet acknowledges that the District’s payment of Rent (as defined in the Lease Agreement) is subject to annual renewal and appropriation and that the District may terminate the Lease Agreement at the end of any annual term with no further obligation.

23. Wells Fargo’s proposal to purchase the Note pursuant to the Term Sheet is subject to the District’s receipt of a favorable ruling on this Petition, completion of legal documents and the formal credit approval process.

24. If the District renews the Lease Agreement for sufficient years that the Note is paid in full, the Lease Agreement terminates and the District has the right to purchase the Financed Project for a nominal sum. The District also has the right to purchase the Financed Project and thus terminate the Lease Agreement at any time upon payment of a purchase price equal to the unpaid principal and interest due on the Note.

25. If the District elects not to renew the Lease Agreement for an additional Renewal Term (as defined in the Lease Agreement) (an “Event of Nonrenewal”), the Lease Agreement shall terminate on November 30 of the then current year and the District shall have no further indebtedness or liability thereunder.

26. In connection with the financing of the Financed Project, the Agency will grant to the District a separate and additional option to purchase the Financed Project for a nominal sum once the Note has been paid in full (the “Option”). The Option shall survive termination of the Lease Agreement in an Event of Nonrenewal. In this way, even in an Event of Nonrenewal, the District preserves the benefit of any Rent it has paid prior to the Event of Nonrenewal.

E. Source of Payment

27. Idaho Code § 67-4917B empowers an auditorium district to “levy a sales tax of not to exceed five percent (5%) of the receipts derived by hotels and motels within the district from the furnishing of hotel and motel rooms.” The District shall utilize a portion of its annual receipts from hotel/motel room tax collections to pay the Rent owed by the District under the Lease Agreement.

F. Authority and Powers

28. Petitioner has the authority to lease property, to enter into the Lease Agreement, and to pay the Rent to finance the Financed Project from hotel/motel room tax collections, pursuant to Idaho Code §§ 67-4912(d), 67-4912(f), and 67-4922A. Section 50-2015, Idaho Code, further authorizes the District to cooperate with the Agency and to sell, convey and lease property, with or without consideration, to or from the Agency for the purposes of financing the Financed Project.

29. Petitioner is subject to the debt limitations contained in Article VIII, § 3 of the Idaho Constitution.

30. Article VIII, § 3 of the Idaho Constitution provides that “No county, city, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two thirds (2/3) of the qualified electors

thereof voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provisions shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within thirty (30) years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void.”

31. Petitioner has not held an election to obtain voter approval of the Lease Agreement.

32. The District will not incur an indebtedness or liability within the meaning of Article VIII, § 3 of the Idaho Constitution by entering into the Lease Agreement because the District will have the right to renew or not to renew the Lease Agreement annually under its express terms, and therefore the District is not obligated beyond any single fiscal year under the Lease Agreement. An Event of Nonrenewal terminates the District’s obligations under the Lease Agreement as of the end of the District’s then current fiscal year. In addition, even in the Event of Nonrenewal by the District, the District retains the right to purchase the Financed Project for a nominal sum once the Note has been paid in full, thus preserving the benefit of any Rent it has paid prior to the Event of Nonrenewal and negating any inference that the District is under an economic compulsion to renew the Lease Agreement in any year.

33. Petitioner has exercised its authority pursuant to the above statutes to approve a resolution (the “Resolution”), to proceed with the filing of judicial confirmation proceedings. Upon this Court’s award of a favorable judgment on this Petition, the Resolution also authorizes the Petitioner to enter into the Lease Agreement. A copy of the Resolution is attached hereto as **Exhibit D**, and incorporated herein.

34. Judicial determination of the validity of the Lease Agreement and the proposed obligations thereunder pursuant to Idaho Code § 7-1301 *et seq.* will serve the public interest and welfare.

35. Petitioner has complied or will comply with all publication, posting, mailing of notice, and hearing requirements pursuant to Idaho Code §§ 7-1304, 7-1305, and 7-1306. Petitioner mailed notice of the public hearing to all persons requesting such notice informing them of the time and place of the public hearing to consider the Resolution authorizing the filing of this petition at least 14 days before the public hearing via certified mail pursuant to Idaho Code §7-1304. Additionally, Petitioner posted notice of the public hearing at or near the main door of the District's administrative office on October 15, 2014 and published notice, far forward, in the *Idaho Statesman*, the official newspaper of general circulation in Ada County, Idaho, on October 20, 2014, which was more than 15 days prior to November 5, 2014, the date of the public hearing. The form of notice published in the *Idaho Statesman* complied with Idaho Code § 7-1306(2). A copy of the notice published in the *Idaho Statesman* is attached hereto as **Exhibit E**, and incorporated herein. This action is in the nature of a proceeding in rem, and jurisdiction of all interested parties will be obtained by publication and posting as provided under Idaho Code §§ 7-1305 and 7-1306.

III.

CLAIM FOR JUDICIAL DETERMINATION - ANNUAL APPROPRIATION

36. Petitioner repeats and realleges each of the allegations contained in paragraphs 1 through 35.

37. Petitioner seeks a judicial determination that the Lease Agreement, which obligates the Petitioner for an initial term ending on the District's November 30 fiscal year-end,


and is renewable each year thereafter through appropriation, budgeting and affirmative notice of the intent to renew, is a valid obligation under Article VIII, § 3 of the Idaho Constitution.

WHEREFORE, Petitioner prays:

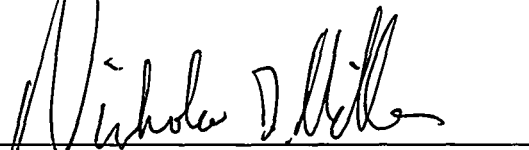
1. For an Order setting the date and time of a hearing herein and directing the giving of notice thereof as provided by law;
2. For a judicial examination and confirmation of the validity of the power and authority of Petitioner to enter into the Lease Agreement based on the finding that such Lease Agreement is not a debt or obligation under Article VIII, §3 of the Idaho Constitution; and
3. For such other and further relief as the Court deems proper.

DATED THIS 18th day of December, 2014.

GIVENS PURSLEY LLP

By: 
Donald E. Knickrehm

HAWLEY TROXELL ENNIS & HAWLEY LLP

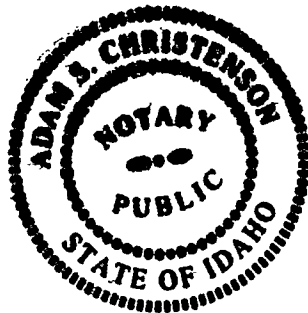
By: 
Nicholas G. Miller

Attorneys for Petitioner
Greater Boise Auditorium District

Jim Walker, being first duly sworn upon oath, deposes and says:

Write
Chairman

I, Adam Christenson, a notary public, do hereby certify that on this 18th day of December, 2014, personally appeared before me Jim Walker, who, being by me first duly sworn, declared that he is the Chairman of the Board of Greater Boise Auditorium District, Petitioner in the foregoing action, that he signed the foregoing document, and that the statements therein contained are true.



Notary Public for Idaho
Residing at Bose, ID
My commission expires 1/8/2020

PETITION EXHIBIT A
DEVELOPMENT AGREEMENT

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (this "**Agreement**") is entered into as of the 19th day of December, 2014, between the Greater Boise Auditorium District, Ada County, State of Idaho, an auditorium district organized and operating under the laws of the State of Idaho (the "**District**"), created and maintained under the provisions of Title 67, Chapter 49, Idaho Code, as amended, and the Urban Renewal Agency of Boise City, Idaho, aka Capital City Development Corporation (the "**Agency**"), a public body, corporate and politic, organized and operating pursuant to Title 50, Chapters 20 and 29, Idaho Code. The Agreement amends and restates the Development Agreement entered into between the District and the Agency dated June 9, 2014.

Section 1. Background.

a. The District intends to expand and improve its convention center and public event facilities in downtown Boise (the "**Project**") to be located within the boundaries of both the District and the Agency.

b. The Project includes (i) renovation of the District's existing convention center facilities (the "**Boise Centre**"), (ii) construction of a new ballroom facility, related kitchen and ancillary facilities, meeting space and ancillary facilities, and an elevated concourse attaching the District's existing facilities to the new ballroom facility, (iii) purchase of related furniture and equipment, and (iv) improvements to the Grove Plaza, the plaza between the Boise Centre and the building to contain the new ballroom facility. The total estimated cost of the Project is \$38,000,000. The new ballroom facility and related kitchen, as well as the new meeting space and all ancillary facilities, are to be located in new buildings being constructed by KC Gardner Company, L.C. (the "**Developer**"), who has acquired title to parcels to the south and west of the existing U.S. Bank office tower in close proximity to the District's existing facilities. The parcels are referred to herein as the "**South Parcel**" and the "**West Parcel**."

c. The District and the Developer have entered into a Master Development Agreement (the "**Master Development Agreement**"), whereby the Developer will agree to develop and build to suit the new ballroom facility, related kitchen and ancillary facilities within a new building to be constructed on the South Parcel, such building referred to herein as the "**Centre Building**," as well as the meeting space and ancillary facilities within a new building to be constructed on the West Parcel, such building referred to herein as the "**Clearwater Building**." Both the Centre Building and the Clearwater Building will be subject to a condominium regime as set forth in the Condominium Documents as defined in and to be entered into pursuant to the Master Development Agreement. The units containing the new ballroom facility, related kitchen and ancillary facilities and the new meeting space and ancillary facilities will be leased or sold by the Developer to the District.

d. The District intends to seek nonappropriation lease financing for purchase of the portion of the Project containing the new ballroom facility, the related kitchen, and ancillary facilities in the Centre Building, which has an estimated cost of \$19,091,084, plus related soft costs

and equipment, for a total cost of \$21,236,400 (collectively, the “**Financed Project**”) and related reserves and financing costs. The improvements in the Clearwater Building are not included in the Financed Project. To facilitate the financing of the Financed Project, the District has requested that the Agency utilize its statutory powers and further its public purposes by issuing a promissory note[s] or similar instrument (the “**Note**”) on the District’s behalf, to be repaid by the Agency solely from lease payments payable by the District to the Agency (the “**Lease Payments**”) in the amount of the principal and interest coming due on such Note under an annual appropriation lease of the Financed Project (the “**Lease Agreement**”).

e. The District intends to utilize its annual receipts from hotel/motel room tax collections and annual revenues from its existing facilities (the “**Revenues**”) as the sole source of payment of annual Lease Payments for the Financed Project.

f. The objective of this Agreement is to document and to facilitate the achievement of the parties’ present intentions with respect to (i) the development of the Financed Project; (ii) the execution and delivery of the Lease Agreement and the issuance of the Note with respect to the Financed Project and related reserves and financing costs; (iii) provision for payment of cost and expenses; and (iv) the required court approval of the financing.

Section 2. Disposition of the Financed Project/ Purchase Agreement.

In the Master Development Agreement, the Developer has agreed to build the Financed Project to suit and then sell the same to the District for an agreed purchase price. To that end, upon satisfaction of certain conditions, including agreement on the final design and guaranteed maximum price, which is estimated to occur in June 2015, the District anticipates entering into a Purchase Agreement in the form attached to the Master Development Agreement (the “**Purchase Agreement**”) providing for the acquisition of the Financed Project from the Developer. The District hereby agrees to assign the Purchase Agreement to the Agency pursuant to an Assignment and Assumption Agreement in the form attached hereto as Exhibit A (the “**Assignment**”). The Agency hereby agrees to accept assignment of the Purchase Agreement and purchase the Financed Project following satisfaction of the conditions in the Master Development Agreement, successful completion of the Judicial Confirmation Proceedings (as hereinafter defined) and issuance of the Note, and thereby the Agency shall become the owner of the Financed Project.

In the event the Financed Project is completed prior to the successful completion of the Judicial Confirmation Proceedings, the District may purchase the Financed Project from the Developer pursuant to the Purchase Agreement with District reserves. In the event the District purchases the Financed Project, upon successful completion of the Judicial Confirmation Proceedings and issuance of the Note, the Agency will purchase the Financed Project from the District using Note proceeds and lease it to the District pursuant to the Lease Agreement.

Section 3. Financing of the Project.

a. Judicial Confirmation Proceedings. The parties understand and agree that a judicial validation of the non-appropriation lease financing structure will be required as a condition to the successful completion of the financing. Thus, the Agency agrees to cooperate with the

District in a petition for judicial validation, to be brought pursuant to Chapter 13 of Title 7, Idaho Code, to seek court approval as to the legal validity of the proposed financing (the “**Judicial Confirmation Proceedings**”). The District shall oversee the Judicial Confirmation Proceedings and such proceedings will be funded in accordance with Section 5 herein. Such proceedings shall clearly describe the roles and relationship of the parties with regard to the financing of the Financed Project and related reserves and financing costs.

b. Note. Upon successful completion of the Judicial Confirmation Proceedings, the District intends to request and upon such request the Agency shall issue the Note in an amount sufficient to provide funds to purchase the Financed Project and fund related reserves and financing costs. The proceeds from sale of the Note shall be used by the Agency to purchase the Financed Project and fund related reserves and financing costs. The timing of the closing of Note shall be directed by the District.

c. Lease Revenues. Upon successful completion of the Judicial Confirmation Proceedings, and prior to or contemporaneously with the sale of the Note, the District shall enter into the Lease Agreement with the Agency, and the District will pay Lease Payments from the Revenues sufficient to pay principal and interest due on the Note, subject to the District’s determination, in its discretion, to annually renew the Lease Agreement. A draft version of the Lease Agreement is attached hereto as Exhibit B.

d. Selection of Finance Professionals. The Parties agree on the identity and roles of the following financing participants and agree to cooperate to identify and select other participants as needed:

- (i) Hawley Troxell Ennis & Hawley LLP will act as note counsel to the District (“**Note Counsel**”) and will issue unqualified legal opinions on the validity of the Lease Agreement and on the validity and tax exemption of the Note;
- (ii) Sherman & Howard L.L.C. will act as special finance counsel to the Agency;
- (iii) Piper Jaffray & Co., which has an existing contract with the Agency, will serve as financial advisor to the Agency (“**Agency’s Financial Advisor**”) and will provide services to the District upon request that relate to structuring the Lease Payments and other terms of the Lease Agreement that will enhance the marketability of the Note;
- (iv) the District may, but is not required to, engage its own financial advisor at its own expense; and
- (v) the District, in consultation with its own financial advisor, if any, Piper Jaffray & Co. and the Agency, shall determine the manner of sale of the Note and select through such process, as they shall agree, one or more underwriters for the Note if sold in a public offering, or institutional investors if the Note is sold in a limited offering.

e. Private Placement. In the event the District and the Agency pursue a private placement for the Note, the District and the Agency agree to place the Note with an entity or entities that would qualify as a bank, a qualified institutional buyer, or an accredited investor. Such purchaser of the Note shall be capable of providing an acceptable letter or certificate indicating that the purchaser is experienced in transaction such as those related to the Note and that the purchaser is knowledgeable and fully capable of independently evaluating the risk involved in investing in the Note. Further, should the purchaser determine, subsequent to its purchase of the Note, to sell, assign, or transfer the Note, any such sale, assignment or transfer shall be made under those same conditions constituting what is referred to as a "traveling letter".

Section 4. Construction of the Project. The District will work with the Developer to manage the construction and development of the Financed Project.

Section 5. Expenses Fund. The District hereby agrees to presently budget and commit \$123,000 in a fund to be called the "**Expenses Fund**" to be held by the District as the sole source of payment for all reasonable and necessary out-of-pocket costs, expenses and fees, incurred by the Agency from June 9, 2014 through the effective date of the Lease directly in connection with the issuance of the Note and the Financed Project, as detailed below.

The District shall not be required to pay for any expenses hereunder in excess of the stop amounts set forth below unless the Agency first obtains the District's prior written consent to incur such excess expenses and additional funds are budgeted and committed therefor:

<u>Expense</u>	<u>Stop Amount</u>
Sherman & Howard L.L.C. (Agency Note Counsel)	\$15,000
Piper Jaffray & Co. (Agency Financial Advisor)	\$63,500
Elam & Burke (Agency General Counsel)	\$40,000
All other Agency incurred expenses	\$ 5,000

The Agency shall provide to the District a monthly accounting of all expenses to be paid from the Expenses Fund. The District shall pay all such amounts owed to parties from amounts held in the Expenses Fund as directed by the Agency within thirty (30) days of being billed for the same, unless the District disputes such expenses. In the event of a dispute, the Executive Director of the District and the Executive Director of the Agency shall meet and attempt to resolve the dispute. In the event the dispute is not resolved by the Executive Directors, the Boards of the District and the Agency shall meet to resolve the dispute. Any amounts due after resolution of a dispute shall be paid within thirty (30) days of such resolution.

The provisions of this Section shall survive for thirty (30) days beyond the termination of this Agreement, and if funds remain in the Expenses Fund thirty (30) days after the termination of this Agreement, such funds shall be released to the District

The District shall pay directly, and not from the Expenses Fund, the fees of Bond Counsel, the District's counsel, and the District's financial advisor, if applicable.

Section 6. Contingency Fund. The District hereby agrees to presently budget and commit \$250,000 in a fund to be called the “**Contingency Fund**” to be held as the sole source of payment for reasonable attorneys’ fees, costs and expenses of the Agency, including insurance premiums for new policies carried and insurance deductibles relating specifically to the Project, for all claims for bodily injury and property damage, other than property insured, made against the Agency that arise from the negligent acts or omissions of the District. The Agency and the District agree to seek and use insurance proceeds prior to use of the Contingency Fund.

The Agency shall provide to the District evidence of all expenses to be paid from the Contingency Fund. The District shall pay all such amounts owed to the Agency within thirty (30) days of evidence of such expenses being submitted unless the District disputes such expenses. In the event of a dispute, the Executive Director of the District and the Executive Director of the Agency shall meet and attempt to resolve the dispute. In the event the dispute is not resolved by the Executive Directors, the Boards of the District and the Agency shall meet to resolve the dispute. Any amounts due after resolution of a dispute shall be paid within thirty (30) days of such resolution.

The Contingency Fund shall not survive termination of this Agreement.

Section 7. Default. Time is of the essence. Failure or delay of either party to perform any obligation of such party under this Agreement constitutes a default hereunder; provided, however, that no party shall be deemed to be in breach of this Agreement unless and until such party has received written notice of such default, and has failed to remedy its failure to perform its obligations therein specified for a period of thirty (30) days.

Section 8. Remedies on Default. Both parties shall have all remedies at law and in equity. The rights and remedies of the parties hereunder are cumulative, and exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by any other party.

Section 9. Term. This Agreement shall be effective until the earliest of the date the Lease Agreement is effective or five (5) years from the date of execution. No provision of this Agreement shall survive termination of this Agreement, except Section 5 which shall survive for thirty (30) days beyond the termination of this Agreement.

Section 10. Miscellaneous Provisions.

a. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered mail, postage prepaid, addressed as follows: if to the Agency, at Capital City Development Corporation, 121 N. 9th, Suite 501, Boise, ID 83702, Attention: Executive Director; if to the District, at Greater Boise Auditorium District, 850 W. Front Street, Boise, ID 83702, attention: Executive Director. The Agency and the District may, by notice hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

b. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Agency, the District and their respective successors and assigns, subject, however, to the limitations contained herein.

c. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

d. Amendments, Changes and Modifications. This Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the Agency and the District.

e. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument, and all of which constitute the entire understanding and agreement of the parties relative to the subject matter hereof.

f. Governing Law. This Agreement shall be governed and construed in accordance with the law of the State of Idaho.

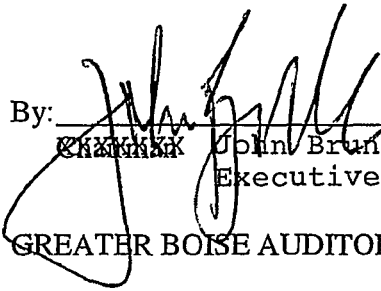
g. Good Faith and Cooperation. It is agreed by the Agency and the District that it is in their mutual best interest and the interest of the public that the Project be financed and developed as herein contemplated, and, to that end, the parties shall in all instances cooperate and act in good faith in compliance with the terms, covenants and conditions of this Agreement and each shall deal fairly with the other.

h. No Third Party Beneficiaries. This Agreement is made for the sole benefit of the Agency and the District, and no other person or persons shall have rights or remedies hereunder. The Agency shall owe no duty to any claimant for labor performed or material furnished with respect to the Project.

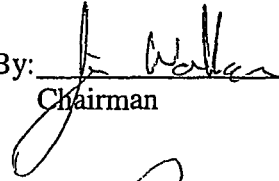
[Signatures appear on following page]

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year hereinabove first written.

URBAN RENEWAL AGENCY OF BOISE CITY,
IDAHO, AKA CAPITAL CITY DEVELOPMENT
CORPORATION

By: 
~~Chairman~~ John Brunelle
Executive Director

GREATER BOISE AUDITORIUM DISTRICT

By: 
Chairman

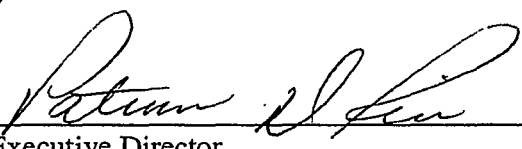
By: 
Executive Director

EXHIBIT A

Draft Assignment

**ASSIGNMENT AND ASSUMPTION AGREEMENT
(Purchase and Sale Agreement for Centre Facilities)**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Assignment") is entered into as of the ____ day of _____, 2014, between the Greater Boise Auditorium District, Ada County, State of Idaho, an auditorium district organized and operating under the laws of the State of Idaho (the "District"), created and maintained under the provisions of Title 67, Chapter 49, Idaho Code, as amended, and the Urban Renewal Agency of Boise City, Idaho, aka Capital City Development Corporation (the "Agency"), a public body, corporate and politic, organized and operating pursuant to Title 50, Chapters 20 and 29, Idaho Code.

Recitals

WHEREAS, the District and the Agency have entered into that Amended and Restated Development Agreement (the "Development Agreement") dated as of the ____ day of _____, 2014;

WHEREAS, pursuant to the Development Agreement, the Agency agreed to work with the District in the expansion of its existing convention center facilities in Boise, Idaho (the "Project") by providing non-appropriation lease financing for a portion thereof;

WHEREAS, the District has entered into a Purchase and Sale Agreement for Centre Facilities (the "Purchase Agreement"), dated the ____ day of _____, 2015, attached hereto as Exhibit A, with City Center Plaza Meeting, LLC, a Utah limited liability company, (the "Seller") for the purchase of a portion of the Project known as the "Centre Facilities", which Centre Facilities are more particularly defined in the Purchase Agreement and legally described on Exhibit B hereto;

WHEREAS, in furtherance of the Development Agreement, the District desires to assign the Purchase Agreement to the Agency and the Agency desires to accept assignment of the Purchase Agreement, assume the District's obligations under the Purchase Agreement and consummate the purchase of the Centre Facilities pursuant to the terms thereof; and

WHEREAS, in Section 4A of the Purchase Agreement, Seller approved the District's assignment of the Purchase Agreement to the Agency.

Agreement

NOW, THEREFORE, in consideration of the recitals set forth above, which the parties acknowledge are true and correct, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment: The District hereby assigns and transfers to the Agency all of the District's right, title and interest in, to, and under the Purchase Agreement.

2. Assumption: The Agency hereby accepts assignment of the Purchase Agreement, assumes the District's obligations thereunder, and agrees to perform, pay, and discharge all of

the obligations of the District thereunder and to purchase the Centre Building pursuant to the terms and conditions thereof.

3. Further Assurances: Each party to this Assignment hereby covenants and agrees to perform all such further acts and deliver all such further agreements, instruments and other documents as the other party shall reasonably request to consummate this Assignment and to close the purchase of the Centre Building pursuant to the terms of the Purchase Agreement.

IN WITNESS WHEREOF, the Assignor and the Assignee have caused this Assignment to be duly executed on the date first written above.

URBAN RENEWAL AGENCY OF BOISE CITY,
IDAHO, AKA CAPITAL CITY DEVELOPMENT
CORPORATION

By: _____
Chairman

GREATER BOISE AUDITORIUM DISTRICT

By: _____
Chairman

By: _____
Executive Director

EXHIBIT A

**Purchase and Sale Agreement for Centre Facilities
(attached)**

ASSIGNMENT AND ASSUMPTION AGREEMENT - 3

CCDC - GBAD Assignment and Assumption Agreement (GP_KDM 10-2-14).DOC[11449-13]

EXHIBIT B

Legal Description of Centre Facilities

ASSIGNMENT AND ASSUMPTION AGREEMENT - 4

CCDC - GBAD Assignment and Assumption Agreement (GP_KDM 10-2-14).DOC[11449-13]

EXHIBIT B
Draft Lease Agreement

**LEASE AGREEMENT
(ANNUAL APPROPRIATION)**

Between

**URBAN RENEWAL AGENCY OF BOISE CITY, IDAHO
Aka Capital City Development Corporation**

And

**GREATER BOISE AUDITORIUM DISTRICT,
ADA COUNTY, STATE OF IDAHO**

Relating to

**Not to exceed \$23,500,000
Lease Revenue Note
(Centre Building Project)**

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Appendix A - Definitions

Exhibit A - Lease Payments
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**LEASE AGREEMENT
(ANNUAL APPROPRIATION)**

THIS LEASE AGREEMENT (ANNUAL APPROPRIATION) (the “Lease” or “Lease Agreement”) is dated as of _____ (the “Effective Date”) between the URBAN RENEWAL AGENCY OF BOISE CITY, IDAHO, aka Capital City Development Corporation, an urban renewal agency of the City of Boise, Idaho, organized and operating as an urban renewal agency pursuant to Chapters 20 and 29, Title 50, Idaho Code (the “Agency”), as lessor, and GREATER BOISE AUDITORIUM DISTRICT, ADA COUNTY, STATE OF IDAHO, a public body organized and operating as an auditorium district pursuant to Chapter 49, Title 67, Idaho Code (the “District”), as lessee.

WITNESSETH:

WHEREAS, the District is a public body organized and operating under the laws of the State of Idaho (the “State”) as an auditorium district pursuant to Title 67, Chapter 49 of the Idaho Code (hereinafter the “Act”); and

WHEREAS, the Act authorizes the District to acquire, operate and maintain public convention and auditorium facilities and further authorizes the District to enter into lease arrangements relating to the construction and operation of its authorized facilities; and

WHEREAS, the Agency is a public body organized and operating as an urban renewal agency of the City of Boise City, Idaho, pursuant to Chapters 20 and 29, Title 50, Idaho Code, as amended (the “Urban Renewal Law”); and

WHEREAS, the Urban Renewal Law authorizes the Agency to carry out urban renewal projects within its area of operation and to issue a revenue note for the purpose of financing the cost of any such urban renewal project and to secure payment of such note as provided in the Section 50-2012 of the Urban Renewal Law; and

WHEREAS, Section 67-4912(f) of the Act authorizes the District to acquire, dispose of and encumber real and personal property and any interest therein, including leases and easements within the District; and

WHEREAS, Section 50-2015 of the Urban Renewal Law authorizes the District to dedicate, sell, convey or lease any of its respective interests in any property to the Agency, to incur the entire expense of any public improvements for an urban renewal project, and take such further actions as are necessary to aid in or cooperate in the planning or carrying out of an urban renewal plan and related activities; and

WHEREAS, Section 50-2015 of the Urban Renewal Law further authorizes the District and the Agency to enter into any such sale, conveyance, lease, or agreement without appraisal, public notice, advertisement, or public bidding; and

WHEREAS, the District intends to expand and improve the **"Boise Centre,"** its existing convention center and public event facilities, in downtown Boise (the **"Project"**) to be located within the boundaries of both the District and the Agency; and

WHEREAS, as part of the Project the District intends to (i) construct a new ballroom facility, related kitchen and ancillary facilities, and (ii) purchase of related furniture and equipment. The new ballroom facility and related kitchen are located in a new building being constructed by KC Gardner Company, L.C. (the **"Developer"**), who has acquired title to parcel to the south of the existing U.S. Bank office tower in close proximity to the Boise Centre. The parcel is referred to herein as the **"South Parcel;"** and

WHEREAS, the District and the Developer have entered into an Amended and Restated Master Development Agreement (the **"Gardner MDA"**), whereby the Developer agreed to develop and build to suit the new ballroom facility, related kitchen and ancillary facilities within a new building to be constructed on the South Parcel, such building referred to herein as the **"Centre Building;"** and

WHEREAS, the Centre Building is subject to a condominium regime as set forth in the Condominium Documents. Condominium units containing the above described facilities will be sold by the Developer to the District; and

WHEREAS, the District is seeking financing for the purchase of the condominium units containing the new ballroom facility, the related kitchen, and ancillary facilities in the Centre Building, along with related soft costs and equipment, which has an estimated cost of \$21,236,400 (collectively, the **"Financed Project"**) and related reserves and financing costs; and

WHEREAS, the Agency has determined, at the request of the District, to issue a revenue note or similar instrument to provide funds to finance the purchase of the Financed Project and related reserves and financing costs to be undertaken by the District and the Agency, which note shall be designated the **"Urban Renewal Agency of Boise City, Idaho, aka Capital City Development Corporation Lease Revenue Note (Centre Building Project),"** in an aggregate principal amount up to \$23,500,000 (the **"Note"**), under and pursuant to a Note Purchase Agreement (the **"Note Purchase Agreement"**) between the Agency and the Bank; and

WHEREAS, the District and the Agency intend for the Agency to purchase the Financed Project with the proceeds of the Note; and

WHEREAS, the Note Purchase Agreement provides the obligation of the purchaser of the Note to provide an acceptable letter or certificate indicating that the purchaser is experienced in transaction such as those related to the Note and that the purchaser is knowledgeable and fully capable of independently evaluating the risk involved in investing in the Note. Further, should the purchaser determine, subsequent to its purchase of the Note, to sell, assign, or transfer the Note, any such sale, assignment or transfer shall be made under those same conditions constituting what is referred to as a "traveling letter."

WHEREAS, the District and the Agency hereby agree to enter into this Lease under the terms of which (i) the Agency will purchase the Financed Project from the Developer and lease it

to the District; and (ii) the District will pledge Tax Receipts, subject to annual appropriation, to pay Rent to the Agency as set forth in Section 5.3; and

WHEREAS, pursuant to the Note Purchase Agreement, the Note shall be secured by (i) the Agency's interest in the Lease and Rent due thereunder; and (ii) the grant of a first lien (subject to the District's Option to Purchase) in the Financed Project pursuant to a Deed of Trust and Assignment of Rents in a form agreed to by the Agency and the Bank, until the Note has been fully repaid; and

WHEREAS, the issuance and delivery of the Note and the execution and delivery of this Lease have been in all respects duly and validly authorized by a resolution adopted by the Agency, and all things necessary to make this Lease and the Note, when executed and authenticated by the Agency, valid and binding legal obligations of the Agency have been done; and

WHEREAS, the execution and delivery of this Lease Agreement has been duly and validly authorized by a resolution adopted by the District, and all things necessary to make this Lease Agreement, when executed and authenticated by the District, a valid and binding legal obligation of the District and the pledge of Tax Receipts, subject to annual appropriation, to pay Rent made hereunder to the Agency and thereafter pledged by the Agency to the payment of the principal of and interest on the Note, has been done; and

NOW, THEREFORE, for and in consideration of the Financed Project and the mutual covenants hereinafter contained, the parties hereto formally covenant, agree and bind themselves as follows:

ARTICLE I DEFINITIONS

Section 1.1 Definitions. Except where the context indicates otherwise, capitalized terms used herein shall have the respective meanings set forth on Appendix A hereto.

ARTICLE II REPRESENTATIONS

Section 2.1 Representations by the District. Where the term or phrase "knowledge," "to the best of its knowledge" and/or "to the knowledge of the District" is used in this Section 2.1, such term or phrase refers to the actual knowledge of the current executive director and officers of the District's Board of Directors. The District hereby represents and warrants to the Agency that:

(a) The District is an independent public body politic and corporate of the State, is duly organized and existing under the laws of the State, is authorized to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder, and has duly authorized the execution and delivery of this Lease.

(b) Neither the execution and delivery of this Lease, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and

conditions of this Lease, conflicts with or results in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which it is bound or constitutes a default under any of the foregoing or results in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the District under the terms of any instrument or agreement.

(c) The financing of the Project is in furtherance of the District's governmental purposes and will enable the District to provide convention and auditorium facilities.

(d) The District has not obtained other financing for the Financed Project, except as has been disclosed in writing to the Agency.

(e) There is no fact that materially adversely affects or that will materially adversely affect (so far as the District can reasonably foresee) the properties, activities, prospects or condition (financial or otherwise) of the District or the ability of the District to make all payments required and otherwise perform its obligations under this Lease.

(f) There are no proceedings pending, or to the knowledge of the District threatened, against or affecting the District in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect the properties, activities, prospects or condition (financial or otherwise) of the District or the ability of the District to make all payments required and otherwise perform its obligations under this Lease.

(g) The consummation of the transactions provided for in this Lease and compliance by the District with the provisions of this Lease are within the District's lawful powers and have been duly authorized by all necessary action on the part of the District.

(h) No event has occurred and no condition exists that, upon execution of this Lease, would constitute an event of default by the District hereunder. The District is not in violation in any material respect, and has not received notice of any claimed violation, of any term of any agreement or other instrument to which it is a party or by which it or its property may be bound.

(i) To the best of its knowledge, the District is in compliance with all laws, ordinances, governmental rules and regulations to which it is subject, and has obtained all licenses, permits, franchises or other governmental authorizations necessary for the ownership of its property or to the conduct of its activities.

(j) The District has not sold and does not intend to sell or enter into any other obligations within fourteen days before or after the date on which the Note will be sold that were or will be (i) sold pursuant to the same plan of financing as the Note and (ii) reasonably expected to be paid from substantially the same source of funds as the Note.

(k) (i) Neither the District nor, to the knowledge of the District, any other person, has stored, disposed or released in, on or about the Financed Project any Hazardous Substances the removal or remediation of which is or could be required, or the maintenance of which is prohibited or penalized, by any applicable Environmental Laws, and any such real property is free from all such Hazardous Substances; and (ii) the District has not given any release or waiver of liability that would waive or impair any claim based on Hazardous Substances to (a) a

prior owner or occupant of the Financed Project, or (b) any party who may be potentially responsible for the presence of Hazardous Substances on any such real property.

Section 2.2 Representations and Warranties of the Agency. Where the term or phrase “knowledge,” “to the best of its knowledge” and/or “to the knowledge of the Agency” is used in this Section 2.2, such term or phrase refers to the actual knowledge of the current executive director and officers of the Board of Commissioners of the Agency. The Agency hereby represents and warrants to the District that:

(a) The Agency is an independent public body politic and corporate of the State of Idaho, is duly organized and existing under the laws of the State of Idaho, is authorized pursuant to the Urban Renewal Law to enter into the transactions contemplated by this Lease Agreement and to carry out its obligations hereunder, and has duly authorized the execution and delivery of this Lease Agreement.

(b) Neither the execution and delivery of this Lease Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Lease Agreement, conflicts with or results in a breach of any of the terms, conditions, provisions of any restriction or any agreement or instrument to which the Agency is now a party or by which it is bound or constitutes a default under any of the foregoing or results in the creation or imposition of any prohibited lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the Agency under the terms of any instrument or agreement.

(c) The Agency has not made and will not make any contract or arrangement of any kind, the performance of which by either party would give rise to a lien (other than a Permitted Encumbrance) on the Financed Project.

(d) Neither the Agency nor, to the best knowledge of the Agency, any other person, has stored, disposed or released in, on or about the Financed Project any Hazardous Substances the removal or remediation of which is or could be required, or the maintenance of which is prohibited or penalized, by any applicable Environmental Laws, and, to the best knowledge of the Agency all such real property is free from all such Hazardous Substances.

ARTICLE III PURCHASE OF FINANCED PROJECT/DEMISING CLAUSE

Section 3.1 Purchase of Financed Project. As of the Effective Date, the District, pursuant to the Assignment and Assumption Agreement, has assigned the District’s right to purchase the Financed Project under the Purchase Agreement to the Agency. After issuance of the Note pursuant to Article IV hereof, and receipt of written consent from the District to proceed with the purchase of the Financed Project, the Agency shall, solely using funds from the Acquisition Fund, purchase the Financed Project from the Developer pursuant to the terms and conditions of the Purchase Agreement and the Assignment and Assumption Agreement. The closing of the purchase of the Financed Project shall take place on the date set forth in the Purchase Agreement for such closing, unless otherwise directed by the District. The Agency will

retain title to the Financed Project until such time as the District may have exercised its Option to Purchase the Financed Project pursuant to Article XI hereof.

Section 3.2 Demise of the Financed Project. Upon the closing of the purchase of the Financed Project by the Agency (the "**Commencement Date**"), the Agency leases to the District and the District leases from the Agency, the Financed Project, in accordance with the provisions of this Lease, subject to Permitted Encumbrances. Subject to the terms and conditions of this Lease and the Condominium Documents, the District shall be permitted to use the Financed Project for any lawful purpose.

Section 3.3 No Obligation to Renew or Exercise Option to Purchase. The Agency acknowledges and recognizes that this Lease will terminate at the end of the Initial Term or any applicable Renewal Term in the event that sufficient funds are not budgeted by the District specifically with respect to this Lease to pay Rent during the next occurring Renewal Term, and that the act of budgeting funds is a legislative act and, as such, is solely within the discretion of the District Board. Additionally, nothing in this Lease shall be construed to require the District to renew the Lease or to exercise its Option to Purchase the Financed Project as provided in Article XI hereof.

ARTICLE IV ISSUANCE OF THE NOTE

Section 4.1 Agreement to Issue Note. In order to provide funds to purchase the Financed Project and fund the Debt Service Reserve Account and Costs of Issuance, the Agency will, pursuant to the Note Purchase Agreement, sell and cause to be delivered the Note to the initial purchasers thereof, no later than the closing date for the purchase of the Financed Project as set forth in the Purchase Agreement, and will deposit the Net Note Proceeds as follows:

- (a) In the Debt Service Reserve Account, a sum equal to the Reserve Requirement with respect to the Note;
- (b) In the Costs of Issuance Fund, a sum equal to the Costs of Issuance of the Note;
and
- (c) In the Acquisition Fund, and the accounts created therein, the balance of the Net Note Proceeds.

Section 4.2 Disbursements from the Acquisition Fund. The Agency shall, upon satisfaction of the requirements in Section 3.1 direct payment from the Acquisition Fund to acquire the Financed Project.

Section 4.3 Costs of Issuance; Disbursements from Costs of Issuance Fund. Upon closing of the Note, Costs of Issuance shall be paid from the Costs of Issuance Fund. Each such payment shall be made upon receipt by the Bank of a requisition in the form required pursuant to the Note Purchase Agreement.

Section 4.4 Cooperation of the Parties. The District and the Agency agree to cooperate with each other in furnishing to the Bank the requisition required in Section 4.3 hereof.

Section 4.5 Investment of Moneys. Any moneys held as a part of the funds created in the Note Purchase Agreement shall be invested in investment securities in accordance with applicable law. The District shall provide the Agency with written notice setting forth the manner in which the funds shall be invested, and the Agency shall direct the Bank to so invest the funds as soon as practicable. The Agency shall send to the District a copy of any certificate sent to the Bank directing investment of the funds.

Section 4.6 Tax Covenant. The District covenants for the benefit of the Bank and the Agency that during the Lease Term it will not take any action or omit to take any action with respect to the Note, the proceeds thereof, any other funds of the District or any improvements financed with the proceeds of the Note if such action or omission (i) would cause the interest on the Note to be included in gross income for federal income tax purposes under Section 103 of the Code, or (ii) would cause interest on the Note to lose its exclusion from State income taxation under State law.

ARTICLE V

EFFECTIVE DATE OF THIS AGREEMENT; DURATION OF LEASE TERM; EVENT OF NONRENEWAL; RENTAL PROVISIONS; NO SURVIVAL

Section 5.1 Effective Date of this Agreement; Duration of Lease Term; Event of Nonrenewal.

(a) This Lease is effective, and is a binding obligation of both the District and the Agency, as of the Effective Date. The Initial Term will begin on the Commencement Date as provided in Section 3.2 and will end on the November 30 following the Commencement Date, or on such sooner date as the Note shall have been fully paid and retired or provision for such payment shall have been made as provided in the Note Purchase Agreement and all other expenses or sums to which the Agency and the Bank are entitled, both under this Lease and the Note Purchase Agreement, have been paid.

(b) At any time during the Initial Term and during each Renewal Term thereafter, the District may, in its sole discretion, renew this Lease for the next subsequent Renewal Term by budgeting funds to pay Rent for such Renewal Term and by giving Notice of Intent to Renew to the Agency. The Notice of Intent to Renew shall be accompanied by a certified copy of the resolution or other official action of the District Board adopting its budget which includes the expenditure of funds for Rent for the Renewal Term. In the event the Agency shall not have received the Notice of Intent to Renew by November 1 of any year, the Agency will notify the District of such non-receipt, and the District shall then have until November 15 to deliver to the Agency its Notice of Intent to Renew.

(c) If the District does not deliver the Notice of Intent to Renew by November 15 of any year, or if the District shall at any time notify the Agency that the District has elected to not renew this Lease for an additional Renewal Term, an Event of Nonrenewal shall be deemed to have occurred. Upon an Event of Nonrenewal, the Lease shall terminate on November 30 of the then current year and, except for the provisions of Section 8.12 herein, no provision of the Lease shall survive termination.

(d) Subject to the preceding sections, this Lease may be renewed for a total of twenty-four (24) consecutive one-year Renewal Terms commencing on December 1 and ending on November 30 of each following calendar year.

(e) It is the intention of the District Board that the decision to renew or not to renew this Lease shall be made solely by the District Board and not by any other District officer.

Section 5.2 Delivery and Acceptance of Possession. The Agency shall deliver to the District sole and exclusive possession of the Financed Project (subject to the right of the Agency to enter thereon and have access thereto pursuant to Section 8.1 hereof) on the Commencement Date, and the District agrees to accept possession of the Financed Project upon such date. The Agency covenants and agrees that after the Commencement Date it will not take any action, other than pursuant to Article X of this Lease and the Note Purchase Agreement to prevent the District from having quiet and peaceable possession and enjoyment of the Financed Project during the Lease Term (subject to the right of the Agency to enter thereon and have access thereto pursuant to Section 8.1 hereof) and will cooperate with the District for that purpose.

Section 5.3 Rent.

The obligation of the District to pay Lease Payments, Prepayments, Debt Service Reserve Payments, Rebate Fund Payments and Occupancy Expenses (collectively, "**Rent**") begins on the Commencement Date and extends only through the Initial Term and any Renewal Term, if the Lease is so renewed at the sole option of the District pursuant to Section 5.1. The District hereby pledges, and grants a senior lien on, Tax Receipts to the payment of Rent during the Lease Term. There is no obligation to pay Rent or any other amounts for any period following an Event of Nonrenewal, and the District has no ongoing obligations for any period following an Event of Nonrenewal, except the obligation to make payments from the Lease Contingency Fund pursuant to Section 8.12. Subject to the foregoing, the District shall pay Rent during the Lease Term as provided in this Section 5.3:

(a) **Lease Payments.** On or before the Lease Payment Date, and subject to Section 5.3(b), the District shall promptly make payments into the Lease Payment Fund as provided on the schedule of Lease Payments attached as "**Exhibit A**" to this Lease (the "**Lease Payments**"), which payments shall be transferred to the Debt Service Account pursuant to the terms of the Note Purchase Agreement, provided however that (i) any amount in the Debt Service Account on the Lease Payment Date in excess of the aggregate amount then required to be held pursuant to this Section shall be credited against the Lease Payments due on such date, and (ii) Exhibit A shall be automatically modified, and Lease Payments reduced, to reflect reduced amounts of interest and principal that will become due on the Note as a result of a partial prepayment or defeasance of the Note pursuant to the Note Purchase Agreement and (b) below. The Agency shall provide, or cause to be provided, to the District written notice at least fifteen (15) calendar days prior to the Lease Payment Date specifying (i) the amount of monies in the Debt Service Account, and (ii) the amount the District must deposit in the Lease Payment Fund as Lease Payments. If on the Lease Payment Date the amount held by the Agency in the Debt Service Account is insufficient to make the required payments of principal and interest on the Note, the District shall forthwith pay such deficiency as Rent hereunder to the Agency for deposit in the Lease Payment Fund.

(b) Prepayments. On or before the fifth (5th) day next preceding any prepayment date for which a notice of prepayment has been given by the District at the District's sole option pursuant to the Note Purchase Agreement, the District shall pay as Rent for deposit in the Lease Payment Fund an amount of money which, together with other moneys available therefor in the Debt Service Account, is sufficient to pay the interest and principal on the Note called for prepayment (a "**Prepayment**"). Upon such payment, Exhibit A hereto shall be revised to reflect such prepayment of the Note.

(c) Debt Service Reserve Payments. Upon the issuance of the Note, the Bank will establish a Debt Service Reserve Account equal to the Reserve Requirement. During the Lease Term, the District shall maintain the Reserve Requirement in the Debt Service Account. Accordingly, if such moneys are transferred from the Debt Service Reserve Account to the Debt Service Account during the Lease Term because of a deficiency therein, the District agrees to pay any amounts required to cause the amount in the Debt Service Reserve Account to equal the Reserve Requirement (the "**Debt Service Reserve Payments**"). In an Event of Nonrenewal, all moneys in the Debt Service Reserve Account shall be available for application to the Note.

(d) Rebate Fund Payments. The District agrees to pay to the Agency any amount required to be paid to the United States of America pursuant to Section 148(f) of the Code to the extent amounts on deposit in the Rebate Fund are insufficient for such purpose ("**Rebate Fund Payments**").

(e) Occupancy Expenses. This Lease is intended to be a net lease to the Agency, it being understood that Agency shall receive all Rent payments set forth in the foregoing paragraphs of this Section 5.3 free and clear of any and all impositions, encumbrances, charges, obligations or expenses of any nature whatsoever in connection with the ownership and operation of the Financed Project, including but not limited to those items described in Article VI hereof. Accordingly, the District shall pay, when due, to the parties respectively entitled thereto all occupancy expenses of the Financed Project typically paid by the tenant in a net lease. The District shall pay Agency Fees and Expenses and Bank Fees and Expenses within fifteen (15) days following receipt from the Agency or the Bank, as applicable, of a bill therefor. All amounts required to be paid by the District pursuant to this Section 5.3(e) shall constitute "**Occupancy Expenses.**"

The District may, at its expense, in good faith, contest any such Occupancy Expenses and, in the event of any such contest, may permit such charges contested to remain unpaid during the period of such contest and any appeal therefrom unless the Agency or the Bank shall notify the District that by nonpayment of any such items the Financed Project will be materially endangered or will be subject to loss or forfeiture, in which case, such charges shall be paid promptly or secured by posting a bond with the Agency or the Bank in form satisfactory to the Agency or the Bank. In the event that the District shall fail to pay any of the foregoing items required by this Section to be paid by the District, the Agency or the Bank may (but shall be under no obligation to) pay the same, and any amounts so advanced therefor by the Agency or the Bank shall become an additional obligation of the District, payable on demand, together with interest thereon at the Advance Rate.

(f) Failure to Make Payments. During the Lease Term, in the event the District should fail to make any payment of Rent when due, the item or installment in default shall continue as an obligation of the District until the amount in default shall have been fully paid, and the District agrees to pay the same with interest thereon at the Advance Rate.

Section 5.4 Payees of Payments. The Lease Payments, Prepayments and the Debt Service Reserve Payments shall be paid directly to the Bank and shall be deposited in the Lease Payment Fund. The payments to be made pursuant to Section 5.3(d) hereof shall be paid to the Bank for deposit in the Rebate Fund. The Occupancy Expenses to be paid to the Agency and the Bank shall be paid directly to the Agency or the Bank, respectively, for their own use. All other Occupancy Expenses shall be made to the appropriate payee of such payment.

ARTICLE VI MAINTENANCE, CHARGES AND INSURANCE

Section 6.1 Maintenance and Modifications of the Financed Project. During the Lease Term, the District agrees that it will at its own expense (i) keep the Financed Project in as reasonably safe condition as its operations permit, (ii) maintain a level of quality and operation of the Financed Project that is at least comparable to the level of quality of character and operation of similar facilities, and (iii) keep the Financed Project in good repair and in good operating condition, making from time to time all necessary repairs thereto (including external and structural repairs) and renewals and replacements thereof. The District may also at its own expense, and subject to the requirements of the Condominium Documents and upon providing written notice to the Agency, make from time to time any additions, modifications or improvements to the Financed Project it may deem desirable for its purposes that do not adversely affect the structural integrity of the building or substantially reduce the value or impair the character of the Financed Project; provided that all such additions, modifications and improvements to the Financed Project shall comply with all applicable building code regulations and ordinances. All such additions, modifications and improvements made by the District shall become a part of the Financed Project. Other than the Permitted Encumbrances, the District will not permit any mechanics' lien, security interest or other encumbrance to be established or to remain against the Financed Project for labor or materials furnished; provided, that if the District first notifies the Agency of its intention to do so, the District may in good faith contest any mechanics' or other liens filed or established against the Financed Project. In such event, the District may permit the items contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless the Agency notifies the District that nonpayment of any such items will materially endanger the interests of the Agency in the Lease, or that the Financed Project or any part thereof will be subject to loss or forfeiture, in which event the District shall promptly pay and cause to be satisfied and discharged all such liens.

Section 6.2 Insurance Required. During the Lease Term, the District and the Agency agree to confer and work together to ensure the Financed Project and the parties are adequately insured. During the Lease Term, the District agrees to insure the Financed Project with insurance companies licensed to do business in the State including all-risk property coverage equal to 100% replacement-cost basis and all other insurance in such amounts and in such manner and against such loss, damage and liability, including liability to third parties, as are customary for facilities of similar function and scope, taking into account liability limits

provided by State law and any requirements of the Condominium Documents, and to pay the premiums with respect thereto. Such policies shall be claims occurred policies and shall include public officials liability coverage.

All policies maintained pursuant to this Section 6.2 (except for workmen's compensation insurance) shall name the District and the Agency and the Bank, as insureds as their respective interests may appear. Such policies or certificates of insurance shall (i) provide that any losses shall be payable notwithstanding any act or negligence of the District or the Agency, and (ii) provide that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least 30 days after receipt of written notice thereof by the District, the Agency, and the Bank. Upon recommendations of an Insurance Consultant who is familiar with the Financed Project and the provisions of this Lease, the District may agree to any reduction, increase or modification, including providing for coverage of additional perils, of the insurance requirements hereunder to such as are adequate and customary for similar institutions and similar projects of like size and operation, and is reasonably obtainable. The District shall provide written notice to the Agency of any such reduction, increase or modification at least 30 days prior to the effective date of such reduction, increase or modification.

The District will deliver to the Agency promptly upon request by the Bank, but in any case within 60 days after the end of each fiscal year during the Lease Term, a certificate of an Authorized Representative of the District setting forth the particulars as to all insurance policies maintained by the District pursuant to this Section 6.2 and certifying that such insurance policies comply with the provisions of this Section 6.2 and that all premiums then due thereon have been paid.

Section 6.3 Application of Net Proceeds of Insurance. The Net Proceeds of any insurance with respect to the Financed Project carried pursuant to Section 6.2 hereof shall be applied as provided in Article VII hereof.

Section 6.4 Advances by the Agency or the Bank. During the Lease Term, in the event the District shall fail to maintain the full insurance coverage required by this Lease or shall fail to keep the Financed Project in as reasonably safe condition as its operating condition will permit, or shall fail to keep the Financed Project in good repair and good operating condition, the Agency or the Bank may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same or make the required repairs, renewals and replacements; and all amounts advanced therefor by the Agency or the Bank shall become an additional obligation of the District to the Agency or the Bank, which amounts, together with interest thereon at the Advance Rate, the District agrees to pay on demand.

ARTICLE VII DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.1 Damage and Destruction. During the Lease Term, if the Financed Project is destroyed or damaged by fire or other casualty to such extent that the claim for loss under the insurance policies resulting from such destruction or damage is less than \$500,000, the Net Proceeds of insurance shall be paid to the District and shall be held or used by the District for such purposes as the District may deem appropriate. The District shall not by reason of the

payment with respect to such destruction or damage be entitled to any reimbursement from the Agency or the Bank or any postponement, abatement or diminution of the Rent.

If the Financed Project is destroyed or damaged (in whole or in part) by fire or other casualty to such extent that the claim for loss under the insurance policies resulting from such destruction or damage is \$500,000 or more, the District shall promptly give written notice thereof to the Agency and the Bank. All Net Proceeds of insurance resulting from such claims for losses of \$500,000 or more shall be paid to and held by the Bank in a separate trust account, to be applied in one or more of the following ways as shall be directed in writing by the District:

(a) The District may promptly repair, rebuild or restore the facilities damaged or destroyed to substantially the same value and condition as they existed prior to such damage or destruction, with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the District, and will not impair operating unity, or the value of the Financed Project, and the Bank will apply so much as may be necessary of the Net Proceeds of such insurance to payment of the costs of such repair, rebuilding or restoration, either on completion thereof or as the work progresses, as certified by the District.

Any balance of such Net Proceeds remaining after payment of all the costs of such repair, rebuilding or restoration shall be transferred by the Bank, at the written request of the District, (A) to the Debt Service Account and applied to the payment of the principal of the Note on the next payment date or dates thereof, or (B) to the District to be applied to other capital costs.

(b) Alternatively, at the option of the District, all Net Proceeds of insurance resulting from claims for losses specified in the first sentence of the preceding paragraph of \$500,000 or more may be used to prepay the Note; provided (1) the Note shall be prepaid in whole in accordance with the Note Purchase Agreement upon exercise of the Option to Purchase, or (2) in the event that less than the total amount outstanding under the Note is to be prepaid, the District shall furnish to the Agency a Consulting Architect's Certificate stating (i) that the portion of the Financed Project damaged or destroyed is not essential to the District's use or occupancy of the Financed Project, or (ii) that the Financed Project has been restored to a condition substantially equivalent to its value and condition prior to the damage or destruction. Any balance of Net Proceeds after prepayment of the Note in whole shall be transferred to the District to be applied to other capital costs.

Section 7.2 Condemnation. In the event that title to, or the temporary use of, the Financed Project or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, the District shall be obligated during the Lease Term to continue to pay Rent. In the event the Net Proceeds from any award made in such eminent domain proceedings is less than \$500,000, all of such Net Proceeds shall be paid to the District and shall be held or used by the District for such purposes as the District may deem appropriate. In the event the Net Proceeds from any award in such eminent domain proceedings is \$500,000 or more, the District will cause the Net Proceeds received by it from such award to be paid to and held by the Bank in a separate trust account, to be applied in one or more of the following ways as shall be directed in writing by the District:

(a) The restoration of the Financed Project to substantially the same value and condition as it existed prior to such condemnation; or

(b) The prepayment of the Note; provided that no part of any such condemnation award may be applied for such prepayment unless (1) the Note shall be prepaid in whole in accordance with the Note Purchase Agreement upon exercise of the Option to Purchase, or (2) in the event that less than the total amount outstanding under the Note is to be prepaid, the District shall furnish to the Agency a Consulting Architect's Certificate stating (i) that the portion of the Financed Project taken by such condemnation proceedings is not essential to the District's use or occupancy of the Financed Project or (ii) that the Financed Project has been restored to a condition substantially equivalent to its value and condition prior to the taking by such condemnation proceedings.

In the event the District elects the option set forth in subparagraph (a) above, the Bank will apply so much as may be necessary of the Net Proceeds of such condemnation award to payment of the costs of such restoration, acquisition or construction, either on completion or as the work progresses.

In the event the Net Proceeds from any award made in any eminent domain proceedings is \$500,000 or more, within 30 days from the date of a final order in any eminent domain proceedings granting condemnation, the District shall direct the Agency in writing which of the ways specified in this Section 7.2 the District elects to have the condemnation award applied. Any balance of the Net Proceeds of the award in such eminent domain proceedings remaining after payment of all the costs of such restoration, acquisition, construction or prepayment of the Note shall be transferred to the Debt Service Account to be applied by the Bank to the payment of the principal of the Note on the next payment date or dates thereof, or in the event of prepayment of the Note in whole, shall be transferred to the District to be applied to other capital costs.

Section 7.3 No Liens. During the Lease Term, all items acquired in the repair, rebuilding or restoration of the Financed Project shall be deemed a part of the Financed Project. The District shall confirm the interests of the Agency in order to put the Agency in a position equivalent to its positions prior to the damage, destruction or condemnation. The District hereby warrants such acquired property shall have no liens or encumbrances other than Permitted Encumbrances, subject to the District's right to contest any such liens or encumbrances pursuant to Section 6.1.

Section 7.4 Investment of Net Proceeds. Any Net Proceeds of insurance or a condemnation award held by the Bank pending restoration, repair or rebuilding of the Financed Project shall be invested in Investment Securities. The earnings or profits on such investments shall be considered part of the Net Proceeds except to the extent required to be deposited into the Rebate Fund.

ARTICLE VIII SPECIAL COVENANTS AND PROVISIONS

Section 8.1 Right of Access. During the Lease Term, the District agrees that the Agency and the Bank and any of their duly authorized agents shall have the right, during the District's regular business hours and after providing at least 48 hours prior written notice, to enter, examine and inspect the Financed Project for any reasonable purpose. The District further agrees that, if the District is in default under this Lease, the Agency and the Bank and their duly authorized agents shall have such rights of access to the Financed Project as may be reasonably necessary for the proper maintenance thereof.

Section 8.2 No Discrimination. During the Lease Term, the District will lawfully operate the Financed Project as part of its convention and meeting facility, free of unlawful discrimination.

Section 8.3 District and Agency to Maintain Existence; Restrictions on Transfer. During the Lease Term, neither the Agency nor the District will reorganize or merge with any other entity, nor will the Agency sell or otherwise dispose of any part of the Financed Project without the prior written consent of the District and the Bank. Neither the Agency nor the District will take any action to cause its existence to be abolished. The Financed Project shall be leased by the District and operated by the District and no other person or entity shall be responsible for such management, except as provided in the Condominium Documents, and otherwise with the prior written consent of the Agency. Any agreement with an independent management firm to operate or provide management services to the District shall require the prior written approval of the Agency. No disposition of the Financed Project or agreement with regard to the Financed Project shall be approved if such disposition or agreement will adversely affect the validity of the Note, or the exclusion from gross income of interest on the Note for federal income tax purposes.

Section 8.4 Environmental Covenants.

(1) During the Lease Term, the District will not cause or permit any Hazardous Substance to be brought upon, kept, used or generated by the District, its agents, employees, contractors or invitees, in the operation and occupation of the Financed Project, unless the use or generation of the Hazardous Substance is necessary for the prudent operation thereof and no functional and reasonably economic nonhazardous substance or process which does not generate Hazardous Substances can be used in place of the Hazardous Substance or the process which generates the Hazardous Substances.

(2) During the Lease Term, the District will, with respect to the Financed Project, at all times and in all respects comply with all Environmental Laws. The District's duty of compliance with Environmental Laws includes, without limitation, the duty to undertake the following specific actions: (i) the District will, at its own expense, procure, maintain in effect, and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required by all Environmental Laws, including, without limitation, permits required for discharge of (appropriately

treated) Hazardous Substances into the ambient air or any sanitary sewers serving the Financed Project; and (ii) except as discharged into the ambient air or a sanitary sewer in strict compliance with all applicable Environmental Laws, any and all Hazardous Substances to be treated and/or disposed by the District from the Financed Project will be removed and transported solely by duly licensed transporters to a duly licensed treatment and/or disposal facility for final treatment and/or disposal (except when applicable Environmental Laws permit on-site treatment or disposal in a sanitary landfill).

Section 8.5 Further Assurances. During the Lease Term, the District and the Agency agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the intention of or facilitating the performance of this Lease.

Section 8.6 Authority of Authorized Representative of the District. Whenever under the provisions of this Lease the approval of the District is required, or the Agency is required to take some action at the request of the District, such approval or such request shall be made by the Authorized Representative of the District unless otherwise specified in this Lease and the Bank or the Agency shall be authorized to act on any such approval or request and the District shall have no complaint against the Agency as a result of any such action taken.

Section 8.7 Covenant as to Litigation. During the Lease Term, the District and the Agency shall keep each other fully informed of any threats, claims or pending litigation relating to this Lease.

Section 8.8 No Third-Party Beneficiaries. This Lease is made for the sole benefit of the District and the Agency, and no other person or persons shall have rights or remedies hereunder except to the extent specifically provided herein and in the Note Purchase Agreement. The District and the Agency shall owe no duty to any claimant for labor performed or material furnished with respect to the Financed Project.

Section 8.9 Continuing Disclosure. During the Lease Term, the District and the Agency agree to execute and comply with the terms of any Continuing Disclosure Undertaking that may be required with respect to the Note.

Section 8.10 Additional Debt of the District. During the Lease Term, the District may not grant a senior lien on the Tax Receipts. In addition, the District may not provide a parity pledge of its Tax Receipts to any other obligation unless the most recently audited financial statements of the District provide Tax Receipts equal to at least 1.75 times maximum annual debt service coverage of the combined annual obligations under the Lease, any other outstanding parity obligations and the annual payments for the proposed obligations and no material adverse impairment of the cash flow is known or forecast.

Nothing herein contained shall prevent the District from issuing obligations which are a charge upon the Tax Receipts junior or inferior to the payment obligations required by this Lease.

Section 8.11 Financing Statements. During the Lease Term, the District shall cause financing statements and continuation statements relating to the Tax Receipts to be filed, in such manner and at such places as may be required by law to fully protect the security of the Bank and the right, title and interest of the Agency and the Bank in and to the Tax Receipts or any part thereof. From time to time, the Agency may, but shall not be required to, obtain an opinion of counsel setting forth what, if any, actions by the District or Agency should be taken to preserve such security. The District shall execute or cause to be executed any and all further instruments as may be required by law or as shall reasonably be requested by the Agency or the Bank, and shall furnish satisfactory evidence to the Agency and the Bank of filing and refiling of such instruments and of every additional instrument that shall be necessary to preserve the security of the Bank and the right, title and interest of the Agency and the Bank in and to the Tax Receipts or any part thereof until the principal of and interest on the Note issued under the Note Purchase Agreement shall have been paid. The Agency shall execute or join in the execution of any such further or additional instruments, if necessary, and file or join in the filing thereof at such time or times and in such place or places as will preserve such security and right, title and interest until the aforesaid principal and interest shall have been paid. In the execution or filing of any such further additional instruments, the Agency may, but shall not be required to, obtain an opinion of counsel on which the Agency shall be entitled to rely. Financing statements shall be terminated upon an Event of Nonrenewal.

Section 8.12 Lease Contingency Fund. The District hereby agrees to presently budget and commit \$350,000 to be held by the District in a fund to be called the "Lease Contingency Fund."

(a) \$250,000 of the Lease Contingency Fund shall be held as the sole source of payment for reasonable attorneys' fees, costs and expenses incurred by the Agency as a result of any claims for bodily injury or property damage, other than property insured, made against the Agency that arise from the negligent acts or omissions of the District, and to reimburse the Agency for the cost of any increased insurance premiums incurred by the Agency resulting solely from its acquisition of the Financed Project or issuance of the Note. The Agency and the District agree to seek and use insurance proceeds prior to use of the Lease Contingency Fund.

(b) \$100,000 of the Lease Contingency Fund shall be held as the sole source of payment for reasonable fees, costs, expenses, losses and liabilities of the Bank relating specifically to the Financed Project.

(c) The Agency and the Bank shall provide to the District evidence of all expenses to be paid from the Lease Contingency Fund. The District shall pay all such amounts owed to the Agency or the Bank, as applicable, within thirty (30) days of evidence of such expenses being submitted unless the District disputes such expenses. In the event of a dispute, the Executive Director of the District and/or the Executive Director of the Agency and the President of the Bank, as applicable, shall meet and attempt to resolve the dispute. In the event the dispute is not resolved the Boards of the District and/or the Agency and applicable Bank representatives shall meet to resolve the dispute. Any amounts due after resolution of a dispute shall be paid within thirty (30) days of such resolution.

(d) The \$250,000 held for reasonable attorneys' fees, costs and expenses of the Agency in Section 8.12(a) shall survive for five (5) years beyond the termination of this Lease, and if funds remain in the Lease Contingency Fund five (5) years after the termination of the Lease, such funds shall be released to the District. Following expiration or termination of this Lease, the District shall have no obligation to the Agency or the Bank, other than as specially provided and budgeted for in Section 8.12(a). The obligations to the Bank under Section 8.12(b) do not survive termination of this Lease.

Section 8.13 Additional Covenants. The District covenants that, during the Lease Term, it will:

(a) neither sell nor otherwise dispose of any property essential to the proper operation of the Financed Project or the maintenance of the Tax Receipts of the District, except as provided for in this Lease or the Note Purchase Agreement. This Section does not prohibit the District from selling or otherwise disposing of any property deemed to be surplus by the District. The District will not enter into any lease or agreement that impairs or impedes the operation of the Financed Project by the District or that impairs or impedes the rights of the Bank with respect to the Tax Receipts of the District;

(b) subject to the provisions of this Lease and the Condominium Documents, continue to operate the Financed Project in good repair and in an efficient and economical manner, making necessary and proper repairs and replacements so that the rights and security of the Bank will be fully protected and preserved;

(c) maintain proper accounts in accordance with generally accepted accounting principles of transactions relating to the Tax Receipts of the District; and

(d) keep or cause to be kept proper books of record and account in which full, true and correct entries will be made of all dealings or transactions of, or in relation to, the business and affairs of the District in accordance with generally accepted accounting principles.

(e) provide annual audited financial statements to the Agency and the Bank within the earlier of 30 days of issuance or 270 days from fiscal year end.

(f) provide annual budget to the Agency and the Bank upon acceptance and approval by the District Board.

(g) Maintain primary operating accounts and supporting bank services with the Bank.

ARTICLE IX ASSIGNMENT, SUBLEASING, PLEDGING AND SELLING

Section 9.1 Assignment and Subleasing. The District may not assign, transfer, encumber or sublease its rights to the Financed Project or this Lease except with the prior written consent of the Agency and the Bank, and subject to each of the following conditions:

(a) No assignment or subleasing shall relieve the District from primary liability for any of its obligations hereunder, and in the event of any such assignment or subleasing, the

District shall continue to remain primarily liable for payment of the Rent as specified in Section 5.3 hereof and for performance and observance of the other covenants and agreements on its part herein provided.

(b) No assignment or subleasing shall impair the exemption of interest on the Note from federal income taxation or the validity of the Note under State law.

(c) The assignee or sublessee shall assume in writing the obligations of the District hereunder to the extent of the interest assigned or subleased.

(d) The District shall, within 30 days after the delivery thereof, furnish or cause to be furnished to the Agency and the Bank a true and complete copy of each such assumption of obligations and assignment or sublease, as the case may be.

Section 9.2 Restrictions on Sale by Agency. The Agency agrees that, except as set forth in Article XI hereof or the Note Purchase Agreement, it will not sell, convey, mortgage, encumber or otherwise dispose of any part of the Financed Project (or its interest therein), so long as there is no event of default that has not been cured or an Event of Nonrenewal has not occurred.

ARTICLE X EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined. The following shall be "events of default" under this Lease and the term "event of default" shall mean, whenever it is used in this Lease, any one or more of the following events:

(a) Failure by the District to make any payment of Rent (following appropriation of such Rent as provided in Section 5.1) when the same shall become due and payable.

(b) Failure by the District to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Lease during the term hereof, other than as referred to in subsection (a) of this Section, for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, given to the District by the Agency or the Bank, provided, however, that in the event that such failure cannot reasonably be remedied within such 30 day period, the District has commenced such remedy during such 30 day period and diligently and continuously prosecutes the same to completion.

(c) The failure by the District promptly to commence proceedings to lift any execution, garnishment or attachment of such consequence as will impair its ability to carry on its operations at the Financed Project or to make any payments under this Lease, or the filing by the District of a petition seeking a composition of indebtedness under any applicable law or statute of the United States of America or of the State.

(d) The District admits insolvency or bankruptcy or its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors or applies for or consents to the appointment of a trustee or receiver for the Financed Project or if bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings for relief under any

bankruptcy law or similar law for the relief of debtors, are instituted by or against the District (other than bankruptcy proceedings instituted by the District against third parties), and if instituted against the District are allowed against the District or are consented to or are not dismissed, stayed or otherwise nullified within ninety days after such institution.

(e) An event of default caused by actions of the District under the Note Purchase Agreement shall have occurred and be continuing.

Section 10.2 Remedies on Default. Whenever any event of default referred to in Section 10.1 hereof shall have occurred and is continuing, and any applicable cure period has expired, the Agency, or the Bank, may take any one or more of the following remedial steps:

(1) The Bank may declare the Rent payable hereunder for the remainder of the Initial Term or the Renewal Term then in effect to be immediately due and payable, whereupon the same shall become due and payable. In no event shall the District be liable in an amount greater than the Rent payable for the remainder of the Initial Term or the Renewal Term then in effect.

(2) The Agency or the Bank may terminate the Lease Term and provide the District notice to vacate the Financed Project, or any portion thereof.

(3) The Agency or the Bank may reenter, repossess, lease part or all of the Financed Project to the extent permitted by law, and apply the proceeds thereof to the District's obligations hereunder.

(4) The Agency or the Bank may take whatever action at law or in equity as may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance or observance of the obligations, agreements, or covenants of the District creating the Event of Default.

In the event that the District fails to make any payment required hereby, the payment so in default shall continue as an obligation of the District until the amount in default shall have been fully paid.

Any moneys received by the Agency or the Bank from the exercise of any of the above remedies, after reimbursement of any reasonable costs incurred by the Agency and the Bank in connection therewith, shall be applied to satisfy the District's obligations hereunder.

Notwithstanding the exercise of any remedy, the Agency the Bank may make any disbursements after the happening of any one or more events of default without thereby waiving their right to accelerate payment of Rent and without liability to make other or further disbursements.

Section 10.3 No Duty to Mitigate Damages. Neither the Bank nor the Agency shall be required to do any act whatsoever or exercise any diligence whatsoever to mitigate the damages to the District if an event of default shall occur hereunder.

Section 10.4 No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency or the Bank is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

Section 10.5 No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Lease should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach waived and shall not be deemed to waive any other breach hereunder.

ARTICLE XI OPTIONS TO PURCHASE

Section 11.1 General Option to Purchase Financed Project. The District is hereby granted the option to purchase the Financed Project and to terminate the Lease Term at any time prior to the expiration of the Lease Term (collectively, the "**Option to Purchase**"). This Option to Purchase shall survive the termination of the Lease Term, as provided in Section 11.5 below. To exercise such Option to Purchase the District shall give written notice to the Agency, which shall specify the date of closing such purchase, which date shall be not less than forty-five (45) days from the date such notice is mailed. The District shall make arrangements satisfactory to the Bank for giving any required notice of prepayment relating to the Note.

Section 11.2 Purchase Price. The purchase price payable by the District in the event of its exercise of the Option to Purchase granted in Section 11.1 shall be the sum of the following:

(a) An amount of money or Government Obligations which will be sufficient to either (at the District's option): (i) defease or prepay the Note in whole or any instrument issued to refund the Note on the specified prepayment date, including without limitation, principal, all interest to accrue to said prepayment date and prepayment premium and expenses; or (ii) to pay the principal of and interest on the Note or any instrument issued to refund the Note to and including the maturity date or dates thereof; and

(b) An amount equal to the Agency's Fees and Expenses and the Bank Fees and Expenses accrued and to accrue until the final payment of the Note or any instrument issued to refund the Note; and

(c) The sum of \$10 for the Financed Project.

Section 11.3 Option to Purchase Following Full Payment or Defeasance of the Note. Provided that the Note and any instrument issued to refund the Note shall have been paid in full or defeased in full, the District shall have the Option to Purchase the Financed Project. The District shall provide notice to the Agency of the exercise of its Option to Purchase under this Section 11.3 within sixty (60) days of full payment or defeasance of the Note. The closing

of the Option to Purchase shall take place within thirty (30) days following such notice. The purchase price payable by the District shall be the sum of the following:

- (a) An amount equal to any unpaid Agency's Fees and Expenses; and
- (b) The sum of \$10 for the Financed Project.

Section 11.4 Conveyance on Purchase. At the closing of any purchase pursuant to this Article XI, the Agency will, upon receipt of the purchase price, deliver to the District such documents and instruments as are reasonably requested by the District conveying to the District the Financed Project, in "as is" condition, free and clear of all liens, claims and encumbrances other than the Permitted Exceptions. The Agency shall convey the Financed Project to the District by special warranty deed. Additionally, the Agency and District will execute and record a termination of this Lease Agreement in the real property records of Ada County, Idaho.

The District, the Agency, and the Bank shall cooperate in executing such documents as are reasonably necessary to accomplish the purpose of this paragraph.

Section 11.5 Survival of Option to Purchase. The Option to Purchase the Financed Project pursuant to Section 11.1 and Section 11.3 shall survive the termination of the Lease Term and this Lease for a period of ninety (90) days following the time at which the Note or any instrument issued to refund the Note ceases to be outstanding.

Section 11.6 Recording of Option. On or before the Effective Date, but prior to recording this Lease, the parties shall memorialize this Option to Purchase in a separate Option to Purchase Agreement and shall record such separate Option to Purchase Agreement in the real property records of Ada County, Idaho

ARTICLE XII COVENANTS IN EVENT OF NONRENEWAL

Section 12.1 Cooperation Regarding Easements in Event of Nonrenewal. If an Event of Nonrenewal occurs and an Option to Purchase under Article XI has not been exercised, the Agency and the District hereby agree to cooperate in granting easements, licenses or the like to ensure access by both parties and their users from the Boise Centre to all portions of the Project.

ARTICLE XIII MISCELLANEOUS

Section 13.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered mail, postage prepaid, addressed as follows:

If to the District: Greater Boise Auditorium District
P.O. Box 1400
Boise, Idaho 83701
Attention: Pat Rice, Executive Director
Facsimile: 208.336.8803

With a copy to: Kimberly D. Maloney
Givens Pursley LLP
601 W. Bannock
Boise, Idaho 83701
Facsimile: 208.388.1300

With a copy to: Nicholas G. Miller
Hawley Troxell Ennis & Hawley LLP
877 Main Street, Suite 1000
Boise, Idaho 83702
Facsimile: 208.9545241

If to the Agency: Urban Renewal Agency of Boise City, Idaho
aka Capital City Development Corporation
121 N. 9th Street
P.O. Box 987
Boise, Idaho 83702
Attention: John Brunelle, Executive Director
Facsimile: 208.384.4267

With a copy to: Ryan P. Armbruster
Elam & Burke, P.A.
251 E. Front Street, Suite 300
P.O. Box 1539
Boise, Idaho 83701-1539
Facsimile: 208.384.5844

If to the Bank:

The Agency, the District, and the Bank may, by notice hereunder, designate any further or different address to which subsequent notices, certificates, or other communications shall be sent.

Section 13.2 Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the District and the Agency and their respective successors and assigns, subject, however, to the limitations contained herein.

Section 13.3 Severability. In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

IN WITNESS WHEREOF, the Agency and the District have caused this Lease to be executed in their respective corporate names as of the date first above written.

GREATER BOISE AUDITORIUM DISTRICT

By: _____
Chairman

**URBAN RENEWAL AGENCY OF BOISE CITY,
IDAHO AKA CAPITAL CITY DEVELOPMENT
CORPORATION**

By: _____
Chairman

STATE OF IDAHO)
) ss.
County of Ada)

On this ____ day of _____, _____ before me, _____, a Notary Public in and for said State, personally appeared _____, known or identified to me to be the Chairman of the Board of Directors of the Greater Boise Auditorium District, and the person that executed the within instrument on behalf of the Greater Boise Auditorium District, and acknowledged to me that the Greater Boise Auditorium District executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for Idaho
Residing at _____
My commission expires _____

STATE OF IDAHO)
) ss.
County of Ada)

On this ____ day of _____, _____ before me, _____, a Notary Public in and for said State, personally appeared _____, known or identified to me to be the Chairman of the Board of Commissioners of the Urban Renewal Agency of Boise City, Idaho aka Capital City Development Corporation, and the person that executed the within instrument on behalf of the Urban Renewal Agency of Boise City, Idaho aka Capital City Development Corporation, and acknowledged to me that the Urban Renewal Agency of Boise City, Idaho aka Capital City Development Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for Idaho
Residing at _____
My commission expires _____

APPENDIX A

DEFINITIONS

“Act” means Chapter 49, Title 67, Idaho Code, as amended.

“Advance Rate” means the Bank’s prime rate plus 4.00%.

“Agency” means the Urban Renewal Agency of Boise City, Idaho aka Capital City Development Corporation, an independent public body politic and corporate constituting a public instrumentality of the State, organized and operating as an urban renewal agency of the City of Boise City under the Urban Renewal Law or any public corporation succeeding to its rights and obligations as permitted under this Lease.

“Agency Board” means the Board of Commissioners of the Agency.

“Agency Fees and Expenses” means a financing fee, payable upon issuance of the Note, and only if such Note is issued, in the amount of \$40,000, less a credit for the \$5,000 pre-financing fee and for so long as the Note, or any instrument issued to refund the Note, shall be outstanding and the Lease is in effect, an annual fee payable on December 1 of each year in arrears in the amount of \$5,000, and the actual reasonable and necessary out-of-pocket expenses incurred by Agency in connection with the Note and/or the ownership of the Financed Project.

“Acquisition Fund” means the Construction Fund created by the Note Purchase Agreement.

“Assignment of Purchase Agreement” means the Assignment of Purchase Agreement entered into between the District and the Agency whereby the District assigns, and the Agency accepts the assignment of, the District’s right to purchase the Financed Project under the Purchase Agreement.

“Authorized Representative” means, in the case of the Agency, the Executive Director and the Chair, in the case of the District, the Executive Director and the Chair, and, when used with reference to the performance of any act, the discharge of any duty or the execution of any certificate or other document, any officer, employee or other person authorized to perform such act, discharge such duty, or execute such certificate or other document.

“Bank” means Wells Fargo Bank, N.A., being the purchaser of the Note.

“Bank Fees and Expenses” means the reasonable and necessary fees and expenses of the Bank in connection with the Note as set forth in the Note Purchase Agreement

“Boise Centre” means the District’s existing convention center facilities.

“Centre Building” means that building to be constructed by the Developer on the South Parcel, which contains the Financed Project.

“Clearwater Building” means that building to be constructed by the Developer on the West Parcel, which shall contain, among other things, meeting space and ancillary facilities to be leased or purchased by the District.

“Code” means the Internal Revenue Code of 1986, as amended, regulations thereunder and rulings and judicial decisions interpreting it or construing it.

“Commencement Date” shall have the meaning given to such term in Section 3.2.

“Condominium Documents” means the Condominium Plat and Condominium Declaration for the City Center Plaza, which will govern the Financed Project.

“Consulting Architect” means the architect or engineer as may be designated by the Agency, or the District, acting as agent of the Agency, in writing.

“Consulting Architect Certificate” means an opinion or report signed by the Consulting Architect.

“Continuing Disclosure Undertaking” shall mean a Continuing Disclosure Undertaking with respect to the Note, executed by the District, and dated the date of delivery of the Note.

“Costs of Issuance” means the fees and expenses of issuance, sale and delivery of the Note, including, but not limited to (i) expenses incurred by the Agency and the District in connection with the issuance, sale and delivery of the Note and in connection with the preparation and execution of the Lease, and the Note Purchase Agreement, the fees and expenses of the Bank in connection with the issuance of the Note, bond insurance premiums, if any, title insurance, rating agency, legal, underwriting, consulting and accounting fees and expenses and printing, photocopying and engraving costs; and (ii) any sums required to reimburse the Agency or the District for advances made by either of them for any of the above items.

“Costs of Issuance Fund” means the Cost of Issuance Fund created by the Note Purchase Agreement.

“Debt Service Account” shall have the meaning set forth in the Note Purchase Agreement.

“Debt Service Reserve Account” shall have the meaning set forth in the Note Purchase Agreement.

“Debt Service Reserve Payments” shall have the meaning given to such term in Section 5.3.

“Deed of Trust” means the Deed of Trust and Assignment of Rents from the Agency to the Bank granting a security interest in the Financed Project.

“Developer” shall mean KC Gardner Company, L.C.

“District” means the Greater Boise Auditorium District, Ada County, State of Idaho, a public body organized and operating as an auditorium district pursuant to Chapter 49, Title 67, Idaho Code.

“District Board” means the Board of Directors of the District.

“Effective Date” means the date set forth in the first paragraph of this Lease.

“Environmental Law” means any federal, state or local environmental statute, regulation, or ordinance presently in effect or that may be promulgated in the future as such statutes, regulations and ordinances may be amended from time to time, including but not limited to the statutes listed below:

Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.

Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq.

Clean Air Act, 42 U.S.C. § 7401 et seq.

Federal Water Pollution Control Act (Clean Water Act of 1977), 33 U.S.C. § 1251 et seq.

Federal Insecticide, Fungicide, and Rodenticide Act (Federal Pesticide Act of 1978), 7 U.S.C. § 136 et seq.

Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.

Safe Drinking Water Act, 42 U.S.C. § 300f et seq.

“Event of Default” means any of the events specified in Section 10.1 of the Lease to be an Event of Default.

“Event of Nonrenewal” means the failure of the District to enter into a Renewal Term as provided in Section 5.1(b) of the Lease, provided that failure to enter into a Renewal Term subsequent to the exercise of an Option to Purchase shall not constitute an Event of Nonrenewal.

“Financed Project” shall mean the condominium units comprising the new ballroom facility, related kitchen and ancillary facilities, along with related soft costs and equipment to be constructed in the Centre Building.

“Funds” shall have the meaning set forth in the Note Purchase Agreement.

“Gardner MDA” shall mean the Amended and Restated Master Development Agreement between the Developer and the District, dated as of November 20, 2014, as such agreement is amended from time to time.

“Government Obligations” shall have the meaning set forth in the Note Purchase Agreement.

“Grove Plaza” means the plaza between the Project and the Boise Centre.

“Hazardous Substances” means any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous, toxic or radioactive substance, or other similar term, by Environmental Law.

“Initial Term” means the initial term of this Lease Agreement commencing on the Commencement Date and terminating on the following November 30.

“Insurance Consultant” means an independent person with recognized expertise on insurance matters selected by the District and approved by the Agency and accepted by the Bank.

“Investment Securities” shall mean any legal investments under the laws of the State of Idaho for moneys held hereunder.

“Lease or Lease Agreement” means this Lease Agreement and any amendments and supplements hereto made in conformity with the requirements hereof and of the Note Purchase Agreement.

“Lease Payment Fund” shall have the meaning set forth in the Note Purchase Agreement.

“Lease Payments” means the payments required to be made by the District pursuant to Section 5.3 of this Lease Agreement, and shown on Exhibit A.

“Lease Payment Date” means the annual payment date occurring in the first month of the District’s fiscal year and no later than December 31, as agreed to between the Agency, the District and the Bank in accordance with Section 5.3 of this Lease Agreement, and as further described on Exhibit A to the Lease Agreement.

“Lease Term” means the Initial Term and any applicable Renewal Term, subject to the provisions of this Lease Agreement, no one of which shall exceed one District fiscal year in length.

“Net Note Proceeds” means the Net Note Proceeds as defined in the Note Purchase Agreement.

“Net Proceeds” means, when used with respect to any insurance payment or condemnation award, the gross proceeds thereof less the expenses (including attorneys’ fees) incurred in collection of such gross proceeds.

“Note” means the Urban Renewal Agency of Boise City, Idaho aka Capital City Development Corporation Lease Revenue Note (Centre Building Project) issued pursuant to the Note Purchase Agreement.

“Note Purchase Agreement” means the Note Purchase Agreement providing for the issuance of the Note to be prepared in accordance with the Bank term sheet dated November 20, 2014.

“Notice of Intent to Renew” means the District’s notice of intent to renew the Lease for a Renewal Term, as required by Section 5.1(b) of this Lease Agreement.

“Occupancy Expenses” shall have the meaning given to such term in Section 5.3.

“Option to Purchase” means the Option to Purchase described in Article XI of this Lease Agreement and to be recorded pursuant to a separate option purchase agreement between the District and the Agency pursuant to which the District is granted an option to purchase the Financed Project.

"Payment Date" shall have the meaning set forth in the Note Purchase Agreement.

"Permitted Encumbrances" means, as of any particular time, (i) liens for taxes and special assessments on the Financed Project not then delinquent, (ii) this Lease Agreement and the Note Purchase Agreement, (iii) the Condominium Documents; (iv) purchase money security interests (except with respect to the equipment purchased with proceeds of the sale of the Note), (v) utility, access and other easements and rights of way, mineral rights, restrictions and exceptions that will not materially interfere with or impair the use of the Financed Project, (vi) mechanics' liens, security interests or other encumbrances to the extent permitted in Section 6.1 of this Lease Agreement, (vii) such minor defects, irregularities, encumbrances, easements, rights of way and clouds on title as normally exist with respect to properties similar in character to the Financed Project and as do not in the aggregate materially impair the property affected thereby for the purpose for which it was acquired or is held by the Agency or the District, including the exceptions to title attached as Exhibit B to this Lease Agreement, or binding agreements to remove such easements or encumbrances have been executed, and (viii) other encumbrances approved in writing by the District and the Agency prior to the delivery of the Note.

"Project" means (i) renovation of the District's existing convention center facilities, (ii) construction of a ballroom facility and related kitchen, meeting space, ancillary facilities, and an elevated concourse attaching the District's existing facilities to the ballroom facility, and (iii) purchase of related furniture and equipment. The total estimated cost of the Project is \$38,000,000.

"Purchase Agreement" means the Purchase and Sale Agreement for the Centre Facilities, which is an agreement for the purchase and sale of the Financed Project entered into by and between the District and the Developer; as such agreement has been amended from time to time.

"Rebate Fund" shall mean the Rebate Fund created in the Note Purchase Agreement.

"Rebate Fund Payments" shall have the meaning given to such term in Section 5.3.

"Prepayments" shall have the meaning given to such term in Section 5.3.

"Renewal Term" means any renewal of this Lease Agreement by the District commencing on December 1 following the Initial Term or on any subsequent December 1, and terminating on the following November 30. Each Renewal Term shall be for no more than one year in duration. The final Renewal Term, if renewed by the District, shall commence December 1, 20__ and terminate November 30, 20__, unless this Lease Agreement shall be terminated earlier as provided in the Lease.

"Rent" means Lease Payments, Prepayments, Debt Service Reserve Payments, Rebate Fund Payments and Occupancy Expenses, all as defined in Section 5.3.

"Reserve Requirement" shall mean the lesser of (i) Maximum Annual Debt Service with respect to the Note, calculated as of the date of issuance of the Note, (ii) 125% of average annual Debt Service on the Note, calculated as of the date of issuance of the Note or (iii) 10% of the aggregate principal amount of the Note upon original issuance thereof; provided that the Reserve Requirement shall not exceed the amount permitted to be capitalized from the proceeds of the

Note under then applicable provisions of federal tax law in order to protect the tax-exempt status of interest on the Note.

“Revenue Fund” shall have the meaning set forth in the Note Purchase Agreement.

“South Parcel” means the real property upon which the Centre Building will be constructed.

“State” means the State of Idaho.

“Tax Receipts” means the amounts representing collections by the Idaho State Tax Commission of the hotel/motel room sales tax levied by the District in accordance with Idaho Code Section 67-4917B.

“Urban Renewal Law” means the Urban Renewal Law of 1965, constituting Chapters 20 and 29, Title 50, Idaho Code, inclusive, as amended.

“West Parcel” means the real property upon which the Clearwater Building will be constructed.

EXHIBIT A
LEASE PAYMENTS

EXHIBIT B
PERMITTED ENCUMBRANCES

PETITION EXHIBIT B
LEASE AGREEMENT

**LEASE AGREEMENT
(ANNUAL APPROPRIATION)**

Between

URBAN RENEWAL AGENCY OF BOISE CITY, IDAHO
Aka Capital City Development Corporation

And

**GREATER BOISE AUDITORIUM DISTRICT,
ADA COUNTY, STATE OF IDAHO**

Relating to

**Not to exceed \$23,500,000
Lease Revenue Note
(Centre Building Project)**

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**LEASE AGREEMENT
(ANNUAL APPROPRIATION)**

THIS LEASE AGREEMENT (ANNUAL APPROPRIATION) (the “**Lease**” or “**Lease Agreement**”) is dated as of _____ (the “**Effective Date**”) between the URBAN RENEWAL AGENCY OF BOISE CITY, IDAHO, aka Capital City Development Corporation, an urban renewal agency of the City of Boise, Idaho, organized and operating as an urban renewal agency pursuant to Chapters 20 and 29, Title 50, Idaho Code (the “**Agency**”), as lessor, and GREATER BOISE AUDITORIUM DISTRICT, ADA COUNTY, STATE OF IDAHO, a public body organized and operating as an auditorium district pursuant to Chapter 49, Title 67, Idaho Code (the “**District**”), as lessee.

WITNESSETH:

WHEREAS, the District is a public body organized and operating under the laws of the State of Idaho (the “**State**”) as an auditorium district pursuant to Title 67, Chapter 49 of the Idaho Code (hereinafter the “**Act**”); and

WHEREAS, the Act authorizes the District to acquire, operate and maintain public convention and auditorium facilities and further authorizes the District to enter into lease arrangements relating to the construction and operation of its authorized facilities; and

WHEREAS, the Agency is a public body organized and operating as an urban renewal agency of the City of Boise City, Idaho, pursuant to Chapters 20 and 29, Title 50, Idaho Code, as amended (the “**Urban Renewal Law**”); and

WHEREAS, the Urban Renewal Law authorizes the Agency to carry out urban renewal projects within its area of operation and to issue a revenue note for the purpose of financing the cost of any such urban renewal project and to secure payment of such note as provided in the Section 50-2012 of the Urban Renewal Law; and

WHEREAS, Section 67-4912(f) of the Act authorizes the District to acquire, dispose of and encumber real and personal property and any interest therein, including leases and easements within the District; and

WHEREAS, Section 50-2015 of the Urban Renewal Law authorizes the District to dedicate, sell, convey or lease any of its respective interests in any property to the Agency, to incur the entire expense of any public improvements for an urban renewal project, and take such further actions as are necessary to aid in or cooperate in the planning or carrying out of an urban renewal plan and related activities; and

WHEREAS, Section 50-2015 of the Urban Renewal Law further authorizes the District and the Agency to enter into any such sale, conveyance, lease, or agreement without appraisal, public notice, advertisement, or public bidding; and

WHEREAS, the District intends to expand and improve the **“Boise Centre,”** its existing convention center and public event facilities, in downtown Boise (the **“Project”**) to be located within the boundaries of both the District and the Agency; and

WHEREAS, as part of the Project the District intends to (i) construct a new ballroom facility, related kitchen and ancillary facilities, and (ii) purchase of related furniture and equipment. The new ballroom facility and related kitchen are located in a new building being constructed by KC Gardner Company, L.C. (the **“Developer”**), who has acquired title to parcel to the south of the existing U.S. Bank office tower in close proximity to the Boise Centre. The parcel is referred to herein as the **“South Parcel;”** and

WHEREAS, the District and the Developer have entered into an Amended and Restated Master Development Agreement (the **“Gardner MDA”**), whereby the Developer agreed to develop and build to suit the new ballroom facility, related kitchen and ancillary facilities within a new building to be constructed on the South Parcel, such building referred to herein as the **“Centre Building;”** and

WHEREAS, the Centre Building is subject to a condominium regime as set forth in the Condominium Documents. Condominium units containing the above described facilities will be sold by the Developer to the District; and

WHEREAS, the District is seeking financing for the purchase of the condominium units containing the new ballroom facility, the related kitchen, and ancillary facilities in the Centre Building, along with related soft costs and equipment, which has an estimated cost of \$21,236,400 (collectively, the **“Financed Project”**) and related reserves and financing costs; and

WHEREAS, the Agency has determined, at the request of the District, to issue a revenue note or similar instrument to provide funds to finance the purchase of the Financed Project and related reserves and financing costs to be undertaken by the District and the Agency, which note shall be designated the **“Urban Renewal Agency of Boise City, Idaho, aka Capital City Development Corporation Lease Revenue Note (Centre Building Project),”** in an aggregate principal amount up to \$23,500,000 (the **“Note”**), under and pursuant to a Note Purchase Agreement (the **“Note Purchase Agreement”**) between the Agency and the Bank; and

WHEREAS, the District and the Agency intend for the Agency to purchase the Financed Project with the proceeds of the Note; and

WHEREAS, the Note Purchase Agreement provides the obligation of the purchaser of the Note to provide an acceptable letter or certificate indicating that the purchaser is experienced in transaction such as those related to the Note and that the purchaser is knowledgeable and fully capable of independently evaluating the risk involved in investing in the Note. Further, should the purchaser determine, subsequent to its purchase of the Note, to sell, assign, or transfer the Note, any such sale, assignment or transfer shall be made under those same conditions constituting what is referred to as a “traveling letter.”

WHEREAS, the District and the Agency hereby agree to enter into this Lease under the terms of which (i) the Agency will purchase the Financed Project from the Developer and lease it

to the District; and (ii) the District will pledge Tax Receipts, subject to annual appropriation, to pay Rent to the Agency as set forth in Section 5.3; and

WHEREAS, pursuant to the Note Purchase Agreement, the Note shall be secured by (i) the Agency's interest in the Lease and Rent due thereunder; and (ii) the grant of a first lien (subject to the District's Option to Purchase) in the Financed Project pursuant to a Deed of Trust and Assignment of Rents in a form agreed to by the Agency and the Bank, until the Note has been fully repaid; and

WHEREAS, the issuance and delivery of the Note and the execution and delivery of this Lease have been in all respects duly and validly authorized by a resolution adopted by the Agency, and all things necessary to make this Lease and the Note, when executed and authenticated by the Agency, valid and binding legal obligations of the Agency have been done; and

WHEREAS, the execution and delivery of this Lease Agreement has been duly and validly authorized by a resolution adopted by the District, and all things necessary to make this Lease Agreement, when executed and authenticated by the District, a valid and binding legal obligation of the District and the pledge of Tax Receipts, subject to annual appropriation, to pay Rent made hereunder to the Agency and thereafter pledged by the Agency to the payment of the principal of and interest on the Note, has been done; and

NOW, THEREFORE, for and in consideration of the Financed Project and the mutual covenants hereinafter contained, the parties hereto formally covenant, agree and bind themselves as follows:

ARTICLE I DEFINITIONS

Section 1.1 Definitions. Except where the context indicates otherwise, capitalized terms used herein shall have the respective meanings set forth on Appendix A hereto.

ARTICLE II REPRESENTATIONS

Section 2.1 Representations by the District. Where the term or phrase "knowledge," "to the best of its knowledge" and/or "to the knowledge of the District" is used in this Section 2.1, such term or phrase refers to the actual knowledge of the current executive director and officers of the District's Board of Directors. The District hereby represents and warrants to the Agency that:

(a) The District is an independent public body politic and corporate of the State, is duly organized and existing under the laws of the State, is authorized to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder, and has duly authorized the execution and delivery of this Lease.

(b) Neither the execution and delivery of this Lease, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and

conditions of this Lease, conflicts with or results in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which it is bound or constitutes a default under any of the foregoing or results in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the District under the terms of any instrument or agreement.

(c) The financing of the Project is in furtherance of the District's governmental purposes and will enable the District to provide convention and auditorium facilities.

(d) The District has not obtained other financing for the Financed Project, except as has been disclosed in writing to the Agency.

(e) There is no fact that materially adversely affects or that will materially adversely affect (so far as the District can reasonably foresee) the properties, activities, prospects or condition (financial or otherwise) of the District or the ability of the District to make all payments required and otherwise perform its obligations under this Lease.

(f) There are no proceedings pending, or to the knowledge of the District threatened, against or affecting the District in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect the properties, activities, prospects or condition (financial or otherwise) of the District or the ability of the District to make all payments required and otherwise perform its obligations under this Lease.

(g) The consummation of the transactions provided for in this Lease and compliance by the District with the provisions of this Lease are within the District's lawful powers and have been duly authorized by all necessary action on the part of the District.

(h) No event has occurred and no condition exists that, upon execution of this Lease, would constitute an event of default by the District hereunder. The District is not in violation in any material respect, and has not received notice of any claimed violation, of any term of any agreement or other instrument to which it is a party or by which it or its property may be bound.

(i) To the best of its knowledge, the District is in compliance with all laws, ordinances, governmental rules and regulations to which it is subject, and has obtained all licenses, permits, franchises or other governmental authorizations necessary for the ownership of its property or to the conduct of its activities.

(j) The District has not sold and does not intend to sell or enter into any other obligations within fourteen days before or after the date on which the Note will be sold that were or will be (i) sold pursuant to the same plan of financing as the Note and (ii) reasonably expected to be paid from substantially the same source of funds as the Note.

(k) (i) Neither the District nor, to the knowledge of the District, any other person, has stored, disposed or released in, on or about the Financed Project any Hazardous Substances the removal or remediation of which is or could be required, or the maintenance of which is prohibited or penalized, by any applicable Environmental Laws, and any such real property is free from all such Hazardous Substances; and (ii) the District has not given any release or waiver of liability that would waive or impair any claim based on Hazardous Substances to (a) a

prior owner or occupant of the Financed Project, or (b) any party who may be potentially responsible for the presence of Hazardous Substances on any such real property.

Section 2.2 Representations and Warranties of the Agency. Where the term or phrase “knowledge,” “to the best of its knowledge” and/or “to the knowledge of the Agency” is used in this Section 2.2, such term or phrase refers to the actual knowledge of the current executive director and officers of the Board of Commissioners of the Agency. The Agency hereby represents and warrants to the District that:

(a) The Agency is an independent public body politic and corporate of the State of Idaho, is duly organized and existing under the laws of the State of Idaho, is authorized pursuant to the Urban Renewal Law to enter into the transactions contemplated by this Lease Agreement and to carry out its obligations hereunder, and has duly authorized the execution and delivery of this Lease Agreement.

(b) Neither the execution and delivery of this Lease Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Lease Agreement, conflicts with or results in a breach of any of the terms, conditions, provisions of any restriction or any agreement or instrument to which the Agency is now a party or by which it is bound or constitutes a default under any of the foregoing or results in the creation or imposition of any prohibited lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the Agency under the terms of any instrument or agreement.

(c) The Agency has not made and will not make any contract or arrangement of any kind, the performance of which by either party would give rise to a lien (other than a Permitted Encumbrance) on the Financed Project.

(d) Neither the Agency nor, to the best knowledge of the Agency, any other person, has stored, disposed or released in, on or about the Financed Project any Hazardous Substances the removal or remediation of which is or could be required, or the maintenance of which is prohibited or penalized, by any applicable Environmental Laws, and, to the best knowledge of the Agency all such real property is free from all such Hazardous Substances.

ARTICLE III PURCHASE OF FINANCED PROJECT/DEMISING CLAUSE

Section 3.1 Purchase of Financed Project. As of the Effective Date, the District, pursuant to the Assignment and Assumption Agreement, has assigned the District’s right to purchase the Financed Project under the Purchase Agreement to the Agency. After issuance of the Note pursuant to Article IV hereof, and receipt of written consent from the District to proceed with the purchase of the Financed Project, the Agency shall, solely using funds from the Acquisition Fund, purchase the Financed Project from the Developer pursuant to the terms and conditions of the Purchase Agreement and the Assignment and Assumption Agreement. The closing of the purchase of the Financed Project shall take place on the date set forth in the Purchase Agreement for such closing, unless otherwise directed by the District. The Agency will

retain title to the Financed Project until such time as the District may have exercised its Option to Purchase the Financed Project pursuant to Article XI hereof.

Section 3.2 Demise of the Financed Project. Upon the closing of the purchase of the Financed Project by the Agency (the “**Commencement Date**”), the Agency leases to the District and the District leases from the Agency, the Financed Project, in accordance with the provisions of this Lease, subject to Permitted Encumbrances. Subject to the terms and conditions of this Lease and the Condominium Documents, the District shall be permitted to use the Financed Project for any lawful purpose.

Section 3.3 No Obligation to Renew or Exercise Option to Purchase. The Agency acknowledges and recognizes that this Lease will terminate at the end of the Initial Term or any applicable Renewal Term in the event that sufficient funds are not budgeted by the District specifically with respect to this Lease to pay Rent during the next occurring Renewal Term, and that the act of budgeting funds is a legislative act and, as such, is solely within the discretion of the District Board. Additionally, nothing in this Lease shall be construed to require the District to renew the Lease or to exercise its Option to Purchase the Financed Project as provided in Article XI hereof.

ARTICLE IV ISSUANCE OF THE NOTE

Section 4.1 Agreement to Issue Note. In order to provide funds to purchase the Financed Project and fund the Debt Service Reserve Account and Costs of Issuance, the Agency will, pursuant to the Note Purchase Agreement, sell and cause to be delivered the Note to the initial purchasers thereof, no later than the closing date for the purchase of the Financed Project as set forth in the Purchase Agreement, and will deposit the Net Note Proceeds as follows:

- (a) In the Debt Service Reserve Account, a sum equal to the Reserve Requirement with respect to the Note;
- (b) In the Costs of Issuance Fund, a sum equal to the Costs of Issuance of the Note;
and
- (c) In the Acquisition Fund, and the accounts created therein, the balance of the Net Note Proceeds.

Section 4.2 Disbursements from the Acquisition Fund. The Agency shall, upon satisfaction of the requirements in Section 3.1 direct payment from the Acquisition Fund to acquire the Financed Project.

Section 4.3 Costs of Issuance; Disbursements from Costs of Issuance Fund. Upon closing of the Note, Costs of Issuance shall be paid from the Costs of Issuance Fund. Each such payment shall be made upon receipt by the Bank of a requisition in the form required pursuant to the Note Purchase Agreement.

Section 4.4 Cooperation of the Parties. The District and the Agency agree to cooperate with each other in furnishing to the Bank the requisition required in Section 4.3 hereof.

Section 4.5 Investment of Moneys. Any moneys held as a part of the funds created in the Note Purchase Agreement shall be invested in investment securities in accordance with applicable law. The District shall provide the Agency with written notice setting forth the manner in which the funds shall be invested, and the Agency shall direct the Bank to so invest the funds as soon as practicable. The Agency shall send to the District a copy of any certificate sent to the Bank directing investment of the funds.

Section 4.6 Tax Covenant. The District covenants for the benefit of the Bank and the Agency that during the Lease Term it will not take any action or omit to take any action with respect to the Note, the proceeds thereof, any other funds of the District or any improvements financed with the proceeds of the Note if such action or omission (i) would cause the interest on the Note to be included in gross income for federal income tax purposes under Section 103 of the Code, or (ii) would cause interest on the Note to lose its exclusion from State income taxation under State law.

ARTICLE V

EFFECTIVE DATE OF THIS AGREEMENT; DURATION OF LEASE TERM; EVENT OF NONRENEWAL; RENTAL PROVISIONS; NO SURVIVAL

Section 5.1 Effective Date of this Agreement; Duration of Lease Term; Event of Nonrenewal.

(a) This Lease is effective, and is a binding obligation of both the District and the Agency, as of the Effective Date. The Initial Term will begin on the Commencement Date as provided in Section 3.2 and will end on the November 30 following the Commencement Date, or on such sooner date as the Note shall have been fully paid and retired or provision for such payment shall have been made as provided in the Note Purchase Agreement and all other expenses or sums to which the Agency and the Bank are entitled, both under this Lease and the Note Purchase Agreement, have been paid.

(b) At any time during the Initial Term and during each Renewal Term thereafter, the District may, in its sole discretion, renew this Lease for the next subsequent Renewal Term by budgeting funds to pay Rent for such Renewal Term and by giving Notice of Intent to Renew to the Agency. The Notice of Intent to Renew shall be accompanied by a certified copy of the resolution or other official action of the District Board adopting its budget which includes the expenditure of funds for Rent for the Renewal Term. In the event the Agency shall not have received the Notice of Intent to Renew by November 1 of any year, the Agency will notify the District of such non-receipt, and the District shall then have until November 15 to deliver to the Agency its Notice of Intent to Renew.

(c) If the District does not deliver the Notice of Intent to Renew by November 15 of any year, or if the District shall at any time notify the Agency that the District has elected to not renew this Lease for an additional Renewal Term, an Event of Nonrenewal shall be deemed to have occurred. Upon an Event of Nonrenewal, the Lease shall terminate on November 30 of the then current year and, except for the provisions of Section 8.12 herein, no provision of the Lease shall survive termination.

(d) Subject to the preceding sections, this Lease may be renewed for a total of twenty-four (24) consecutive one-year Renewal Terms commencing on December 1 and ending on November 30 of each following calendar year.

(e) It is the intention of the District Board that the decision to renew or not to renew this Lease shall be made solely by the District Board and not by any other District officer.

Section 5.2 Delivery and Acceptance of Possession. The Agency shall deliver to the District sole and exclusive possession of the Financed Project (subject to the right of the Agency to enter thereon and have access thereto pursuant to Section 8.1 hereof) on the Commencement Date, and the District agrees to accept possession of the Financed Project upon such date. The Agency covenants and agrees that after the Commencement Date it will not take any action, other than pursuant to Article X of this Lease and the Note Purchase Agreement to prevent the District from having quiet and peaceable possession and enjoyment of the Financed Project during the Lease Term (subject to the right of the Agency to enter thereon and have access thereto pursuant to Section 8.1 hereof) and will cooperate with the District for that purpose.

Section 5.3 Rent.

The obligation of the District to pay Lease Payments, Prepayments, Debt Service Reserve Payments, Rebate Fund Payments and Occupancy Expenses (collectively, "**Rent**") begins on the Commencement Date and extends only through the Initial Term and any Renewal Term, if the Lease is so renewed at the sole option of the District pursuant to Section 5.1. The District hereby pledges, and grants a senior lien on, Tax Receipts to the payment of Rent during the Lease Term. There is no obligation to pay Rent or any other amounts for any period following an Event of Nonrenewal, and the District has no ongoing obligations for any period following an Event of Nonrenewal, except the obligation to make payments from the Lease Contingency Fund pursuant to Section 8.12. Subject to the foregoing, the District shall pay Rent during the Lease Term as provided in this Section 5.3:

(a) Lease Payments. On or before the Lease Payment Date, and subject to Section 5.3(b), the District shall promptly make payments into the Lease Payment Fund as provided on the schedule of Lease Payments attached as "**Exhibit A**" to this Lease (the "**Lease Payments**"), which payments shall be transferred to the Debt Service Account pursuant to the terms of the Note Purchase Agreement, provided however that (i) any amount in the Debt Service Account on the Lease Payment Date in excess of the aggregate amount then required to be held pursuant to this Section shall be credited against the Lease Payments due on such date, and (ii) Exhibit A shall be automatically modified, and Lease Payments reduced, to reflect reduced amounts of interest and principal that will become due on the Note as a result of a partial prepayment or defeasance of the Note pursuant to the Note Purchase Agreement and (b) below. The Agency shall provide, or cause to be provided, to the District written notice at least fifteen (15) calendar days prior to the Lease Payment Date specifying (i) the amount of monies in the Debt Service Account, and (ii) the amount the District must deposit in the Lease Payment Fund as Lease Payments. If on the Lease Payment Date the amount held by the Agency in the Debt Service Account is insufficient to make the required payments of principal and interest on the Note, the District shall forthwith pay such deficiency as Rent hereunder to the Agency for deposit in the Lease Payment Fund.

(b) Prepayments. On or before the fifth (5th) day next preceding any prepayment date for which a notice of prepayment has been given by the District at the District's sole option pursuant to the Note Purchase Agreement, the District shall pay as Rent for deposit in the Lease Payment Fund an amount of money which, together with other moneys available therefor in the Debt Service Account, is sufficient to pay the interest and principal on the Note called for prepayment (a "**Prepayment**"). Upon such payment, Exhibit A hereto shall be revised to reflect such prepayment of the Note.

(c) Debt Service Reserve Payments. Upon the issuance of the Note, the Bank will establish a Debt Service Reserve Account equal to the Reserve Requirement. During the Lease Term, the District shall maintain the Reserve Requirement in the Debt Service Account. Accordingly, if such moneys are transferred from the Debt Service Reserve Account to the Debt Service Account during the Lease Term because of a deficiency therein, the District agrees to pay any amounts required to cause the amount in the Debt Service Reserve Account to equal the Reserve Requirement (the "**Debt Service Reserve Payments**"). In an Event of Nonrenewal, all moneys in the Debt Service Reserve Account shall be available for application to the Note.

(d) Rebate Fund Payments. The District agrees to pay to the Agency any amount required to be paid to the United States of America pursuant to Section 148(f) of the Code to the extent amounts on deposit in the Rebate Fund are insufficient for such purpose ("**Rebate Fund Payments**").

(e) Occupancy Expenses. This Lease is intended to be a net lease to the Agency, it being understood that Agency shall receive all Rent payments set forth in the foregoing paragraphs of this Section 5.3 free and clear of any and all impositions, encumbrances, charges, obligations or expenses of any nature whatsoever in connection with the ownership and operation of the Financed Project, including but not limited to those items described in Article VI hereof. Accordingly, the District shall pay, when due, to the parties respectively entitled thereto all occupancy expenses of the Financed Project typically paid by the tenant in a net lease. The District shall pay Agency Fees and Expenses and Bank Fees and Expenses within fifteen (15) days following receipt from the Agency or the Bank, as applicable, of a bill therefor. All amounts required to be paid by the District pursuant to this Section 5.3(e) shall constitute "**Occupancy Expenses.**"

The District may, at its expense, in good faith, contest any such Occupancy Expenses and, in the event of any such contest, may permit such charges contested to remain unpaid during the period of such contest and any appeal therefrom unless the Agency or the Bank shall notify the District that by nonpayment of any such items the Financed Project will be materially endangered or will be subject to loss or forfeiture, in which case, such charges shall be paid promptly or secured by posting a bond with the Agency or the Bank in form satisfactory to the Agency or the Bank. In the event that the District shall fail to pay any of the foregoing items required by this Section to be paid by the District, the Agency or the Bank may (but shall be under no obligation to) pay the same, and any amounts so advanced therefor by the Agency or the Bank shall become an additional obligation of the District, payable on demand, together with interest thereon at the Advance Rate.

(f) Failure to Make Payments. During the Lease Term, in the event the District should fail to make any payment of Rent when due, the item or installment in default shall continue as an obligation of the District until the amount in default shall have been fully paid, and the District agrees to pay the same with interest thereon at the Advance Rate.

Section 5.4 Payees of Payments. The Lease Payments, Prepayments and the Debt Service Reserve Payments shall be paid directly to the Bank and shall be deposited in the Lease Payment Fund. The payments to be made pursuant to Section 5.3(d) hereof shall be paid to the Bank for deposit in the Rebate Fund. The Occupancy Expenses to be paid to the Agency and the Bank shall be paid directly to the Agency or the Bank, respectively, for their own use. All other Occupancy Expenses shall be made to the appropriate payee of such payment.

ARTICLE VI MAINTENANCE, CHARGES AND INSURANCE

Section 6.1 Maintenance and Modifications of the Financed Project. During the Lease Term, the District agrees that it will at its own expense (i) keep the Financed Project in as reasonably safe condition as its operations permit, (ii) maintain a level of quality and operation of the Financed Project that is at least comparable to the level of quality of character and operation of similar facilities, and (iii) keep the Financed Project in good repair and in good operating condition, making from time to time all necessary repairs thereto (including external and structural repairs) and renewals and replacements thereof. The District may also at its own expense, and subject to the requirements of the Condominium Documents and upon providing written notice to the Agency, make from time to time any additions, modifications or improvements to the Financed Project it may deem desirable for its purposes that do not adversely affect the structural integrity of the building or substantially reduce the value or impair the character of the Financed Project; provided that all such additions, modifications and improvements to the Financed Project shall comply with all applicable building code regulations and ordinances. All such additions, modifications and improvements made by the District shall become a part of the Financed Project. Other than the Permitted Encumbrances, the District will not permit any mechanics' lien, security interest or other encumbrance to be established or to remain against the Financed Project for labor or materials furnished; provided, that if the District first notifies the Agency of its intention to do so, the District may in good faith contest any mechanics' or other liens filed or established against the Financed Project. In such event, the District may permit the items contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless the Agency notifies the District that nonpayment of any such items will materially endanger the interests of the Agency in the Lease, or that the Financed Project or any part thereof will be subject to loss or forfeiture, in which event the District shall promptly pay and cause to be satisfied and discharged all such liens.

Section 6.2 Insurance Required. During the Lease Term, the District and the Agency agree to confer and work together to ensure the Financed Project and the parties are adequately insured. During the Lease Term, the District agrees to insure the Financed Project with insurance companies licensed to do business in the State including all-risk property coverage equal to 100% replacement-cost basis and all other insurance in such amounts and in such manner and against such loss, damage and liability, including liability to third parties, as are customary for facilities of similar function and scope, taking into account liability limits

provided by State law and any requirements of the Condominium Documents, and to pay the premiums with respect thereto. Such policies shall be claims occurred policies and shall include public officials liability coverage.

All policies maintained pursuant to this Section 6.2 (except for workmen's compensation insurance) shall name the District and the Agency and the Bank, as insureds as their respective interests may appear. Such policies or certificates of insurance shall (i) provide that any losses shall be payable notwithstanding any act or negligence of the District or the Agency, and (ii) provide that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least 30 days after receipt of written notice thereof by the District, the Agency, and the Bank. Upon recommendations of an Insurance Consultant who is familiar with the Financed Project and the provisions of this Lease, the District may agree to any reduction, increase or modification, including providing for coverage of additional perils, of the insurance requirements hereunder to such as are adequate and customary for similar institutions and similar projects of like size and operation, and is reasonably obtainable. The District shall provide written notice to the Agency of any such reduction, increase or modification at least 30 days prior to the effective date of such reduction, increase or modification.

The District will deliver to the Agency promptly upon request by the Bank, but in any case within 60 days after the end of each fiscal year during the Lease Term, a certificate of an Authorized Representative of the District setting forth the particulars as to all insurance policies maintained by the District pursuant to this Section 6.2 and certifying that such insurance policies comply with the provisions of this Section 6.2 and that all premiums then due thereon have been paid.

Section 6.3 Application of Net Proceeds of Insurance. The Net Proceeds of any insurance with respect to the Financed Project carried pursuant to Section 6.2 hereof shall be applied as provided in Article VII hereof.

Section 6.4 Advances by the Agency or the Bank. During the Lease Term, in the event the District shall fail to maintain the full insurance coverage required by this Lease or shall fail to keep the Financed Project in as reasonably safe condition as its operating condition will permit, or shall fail to keep the Financed Project in good repair and good operating condition, the Agency or the Bank may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same or make the required repairs, renewals and replacements; and all amounts advanced therefor by the Agency or the Bank shall become an additional obligation of the District to the Agency or the Bank, which amounts, together with interest thereon at the Advance Rate, the District agrees to pay on demand.

ARTICLE VII DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.1 Damage and Destruction. During the Lease Term, if the Financed Project is destroyed or damaged by fire or other casualty to such extent that the claim for loss under the insurance policies resulting from such destruction or damage is less than \$500,000, the Net Proceeds of insurance shall be paid to the District and shall be held or used by the District for such purposes as the District may deem appropriate. The District shall not by reason of the

payment with respect to such destruction or damage be entitled to any reimbursement from the Agency or the Bank or any postponement, abatement or diminution of the Rent.

If the Financed Project is destroyed or damaged (in whole or in part) by fire or other casualty to such extent that the claim for loss under the insurance policies resulting from such destruction or damage is \$500,000 or more, the District shall promptly give written notice thereof to the Agency and the Bank. All Net Proceeds of insurance resulting from such claims for losses of \$500,000 or more shall be paid to and held by the Bank in a separate trust account, to be applied in one or more of the following ways as shall be directed in writing by the District:

(a) The District may promptly repair, rebuild or restore the facilities damaged or destroyed to substantially the same value and condition as they existed prior to such damage or destruction, with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the District, and will not impair operating unity, or the value of the Financed Project, and the Bank will apply so much as may be necessary of the Net Proceeds of such insurance to payment of the costs of such repair, rebuilding or restoration, either on completion thereof or as the work progresses, as certified by the District.

Any balance of such Net Proceeds remaining after payment of all the costs of such repair, rebuilding or restoration shall be transferred by the Bank, at the written request of the District, (A) to the Debt Service Account and applied to the payment of the principal of the Note on the next payment date or dates thereof, or (B) to the District to be applied to other capital costs.

(b) Alternatively, at the option of the District, all Net Proceeds of insurance resulting from claims for losses specified in the first sentence of the preceding paragraph of \$500,000 or more may be used to prepay the Note; provided (1) the Note shall be prepaid in whole in accordance with the Note Purchase Agreement upon exercise of the Option to Purchase, or (2) in the event that less than the total amount outstanding under the Note is to be prepaid, the District shall furnish to the Agency a Consulting Architect's Certificate stating (i) that the portion of the Financed Project damaged or destroyed is not essential to the District's use or occupancy of the Financed Project, or (ii) that the Financed Project has been restored to a condition substantially equivalent to its value and condition prior to the damage or destruction. Any balance of Net Proceeds after prepayment of the Note in whole shall be transferred to the District to be applied to other capital costs.

Section 7.2 Condemnation. In the event that title to, or the temporary use of, the Financed Project or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, the District shall be obligated during the Lease Term to continue to pay Rent. In the event the Net Proceeds from any award made in such eminent domain proceedings is less than \$500,000, all of such Net Proceeds shall be paid to the District and shall be held or used by the District for such purposes as the District may deem appropriate. In the event the Net Proceeds from any award in such eminent domain proceedings is \$500,000 or more, the District will cause the Net Proceeds received by it from such award to be paid to and held by the Bank in a separate trust account, to be applied in one or more of the following ways as shall be directed in writing by the District:

(a) The restoration of the Financed Project to substantially the same value and condition as it existed prior to such condemnation; or

(b) The prepayment of the Note; provided that no part of any such condemnation award may be applied for such prepayment unless (1) the Note shall be prepaid in whole in accordance with the Note Purchase Agreement upon exercise of the Option to Purchase, or (2) in the event that less than the total amount outstanding under the Note is to be prepaid, the District shall furnish to the Agency a Consulting Architect's Certificate stating (i) that the portion of the Financed Project taken by such condemnation proceedings is not essential to the District's use or occupancy of the Financed Project or (ii) that the Financed Project has been restored to a condition substantially equivalent to its value and condition prior to the taking by such condemnation proceedings.

In the event the District elects the option set forth in subparagraph (a) above, the Bank will apply so much as may be necessary of the Net Proceeds of such condemnation award to payment of the costs of such restoration, acquisition or construction, either on completion or as the work progresses.

In the event the Net Proceeds from any award made in any eminent domain proceedings is \$500,000 or more, within 30 days from the date of a final order in any eminent domain proceedings granting condemnation, the District shall direct the Agency in writing which of the ways specified in this Section 7.2 the District elects to have the condemnation award applied. Any balance of the Net Proceeds of the award in such eminent domain proceedings remaining after payment of all the costs of such restoration, acquisition, construction or prepayment of the Note shall be transferred to the Debt Service Account to be applied by the Bank to the payment of the principal of the Note on the next payment date or dates thereof, or in the event of prepayment of the Note in whole, shall be transferred to the District to be applied to other capital costs.

Section 7.3 No Liens. During the Lease Term, all items acquired in the repair, rebuilding or restoration of the Financed Project shall be deemed a part of the Financed Project. The District shall confirm the interests of the Agency in order to put the Agency in a position equivalent to its positions prior to the damage, destruction or condemnation. The District hereby warrants such acquired property shall have no liens or encumbrances other than Permitted Encumbrances, subject to the District's right to contest any such liens or encumbrances pursuant to Section 6.1.

Section 7.4 Investment of Net Proceeds. Any Net Proceeds of insurance or a condemnation award held by the Bank pending restoration, repair or rebuilding of the Financed Project shall be invested in Investment Securities. The earnings or profits on such investments shall be considered part of the Net Proceeds except to the extent required to be deposited into the Rebate Fund.

ARTICLE VIII SPECIAL COVENANTS AND PROVISIONS

Section 8.1 Right of Access. During the Lease Term, the District agrees that the Agency and the Bank and any of their duly authorized agents shall have the right, during the District's regular business hours and after providing at least 48 hours prior written notice, to enter, examine and inspect the Financed Project for any reasonable purpose. The District further agrees that, if the District is in default under this Lease, the Agency and the Bank and their duly authorized agents shall have such rights of access to the Financed Project as may be reasonably necessary for the proper maintenance thereof.

Section 8.2 No Discrimination. During the Lease Term, the District will lawfully operate the Financed Project as part of its convention and meeting facility, free of unlawful discrimination.

Section 8.3 District and Agency to Maintain Existence; Restrictions on Transfer. During the Lease Term, neither the Agency nor the District will reorganize or merge with any other entity, nor will the Agency sell or otherwise dispose of any part of the Financed Project without the prior written consent of the District and the Bank. Neither the Agency nor the District will take any action to cause its existence to be abolished. The Financed Project shall be leased by the District and operated by the District and no other person or entity shall be responsible for such management, except as provided in the Condominium Documents, and otherwise with the prior written consent of the Agency. Any agreement with an independent management firm to operate or provide management services to the District shall require the prior written approval of the Agency. No disposition of the Financed Project or agreement with regard to the Financed Project shall be approved if such disposition or agreement will adversely affect the validity of the Note, or the exclusion from gross income of interest on the Note for federal income tax purposes.

Section 8.4 Environmental Covenants.

(1) During the Lease Term, the District will not cause or permit any Hazardous Substance to be brought upon, kept, used or generated by the District, its agents, employees, contractors or invitees, in the operation and occupation of the Financed Project, unless the use or generation of the Hazardous Substance is necessary for the prudent operation thereof and no functional and reasonably economic nonhazardous substance or process which does not generate Hazardous Substances can be used in place of the Hazardous Substance or the process which generates the Hazardous Substances.

(2) During the Lease Term, the District will, with respect to the Financed Project, at all times and in all respects comply with all Environmental Laws. The District's duty of compliance with Environmental Laws includes, without limitation, the duty to undertake the following specific actions: (i) the District will, at its own expense, procure, maintain in effect, and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required by all Environmental Laws, including, without limitation, permits required for discharge of (appropriately

treated) Hazardous Substances into the ambient air or any sanitary sewers serving the Financed Project; and (ii) except as discharged into the ambient air or a sanitary sewer in strict compliance with all applicable Environmental Laws, any and all Hazardous Substances to be treated and/or disposed by the District from the Financed Project will be removed and transported solely by duly licensed transporters to a duly licensed treatment and/or disposal facility for final treatment and/or disposal (except when applicable Environmental Laws permit on-site treatment or disposal in a sanitary landfill).

Section 8.5 Further Assurances. During the Lease Term, the District and the Agency agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the intention of or facilitating the performance of this Lease.

Section 8.6 Authority of Authorized Representative of the District. Whenever under the provisions of this Lease the approval of the District is required, or the Agency is required to take some action at the request of the District, such approval or such request shall be made by the Authorized Representative of the District unless otherwise specified in this Lease and the Bank or the Agency shall be authorized to act on any such approval or request and the District shall have no complaint against the Agency as a result of any such action taken.

Section 8.7 Covenant as to Litigation. During the Lease Term, the District and the Agency shall keep each other fully informed of any threats, claims or pending litigation relating to this Lease.

Section 8.8 No Third-Party Beneficiaries. This Lease is made for the sole benefit of the District and the Agency, and no other person or persons shall have rights or remedies hereunder except to the extent specifically provided herein and in the Note Purchase Agreement. The District and the Agency shall owe no duty to any claimant for labor performed or material furnished with respect to the Financed Project.

Section 8.9 Continuing Disclosure. During the Lease Term, the District and the Agency agree to execute and comply with the terms of any Continuing Disclosure Undertaking that may be required with respect to the Note.

Section 8.10 Additional Debt of the District. During the Lease Term, the District may not grant a senior lien on the Tax Receipts. In addition, the District may not provide a parity pledge of its Tax Receipts to any other obligation unless the most recently audited financial statements of the District provide Tax Receipts equal to at least 1.75 times maximum annual debt service coverage of the combined annual obligations under the Lease, any other outstanding parity obligations and the annual payments for the proposed obligations and no material adverse impairment of the cash flow is known or forecast.

Nothing herein contained shall prevent the District from issuing obligations which are a charge upon the Tax Receipts junior or inferior to the payment obligations required by this Lease.

Section 8.11 Financing Statements. During the Lease Term, the District shall cause financing statements and continuation statements relating to the Tax Receipts to be filed, in such manner and at such places as may be required by law to fully protect the security of the Bank and the right, title and interest of the Agency and the Bank in and to the Tax Receipts or any part thereof. From time to time, the Agency may, but shall not be required to, obtain an opinion of counsel setting forth what, if any, actions by the District or Agency should be taken to preserve such security. The District shall execute or cause to be executed any and all further instruments as may be required by law or as shall reasonably be requested by the Agency or the Bank, and shall furnish satisfactory evidence to the Agency and the Bank of filing and refiling of such instruments and of every additional instrument that shall be necessary to preserve the security of the Bank and the right, title and interest of the Agency and the Bank in and to the Tax Receipts or any part thereof until the principal of and interest on the Note issued under the Note Purchase Agreement shall have been paid. The Agency shall execute or join in the execution of any such further or additional instruments, if necessary, and file or join in the filing thereof at such time or times and in such place or places as will preserve such security and right, title and interest until the aforesaid principal and interest shall have been paid. In the execution or filing of any such further additional instruments, the Agency may, but shall not be required to, obtain an opinion of counsel on which the Agency shall be entitled to rely. Financing statements shall be terminated upon an Event of Nonrenewal.

Section 8.12 Lease Contingency Fund. The District hereby agrees to presently budget and commit \$350,000 to be held by the District in a fund to be called the “**Lease Contingency Fund.**”

(a) \$250,000 of the Lease Contingency Fund shall be held as the sole source of payment for reasonable attorneys’ fees, costs and expenses incurred by the Agency as a result of any claims for bodily injury or property damage, other than property insured, made against the Agency that arise from the negligent acts or omissions of the District, and to reimburse the Agency for the cost of any increased insurance premiums incurred by the Agency resulting solely from its acquisition of the Financed Project or issuance of the Note. The Agency and the District agree to seek and use insurance proceeds prior to use of the Lease Contingency Fund.

(b) \$100,000 of the Lease Contingency Fund shall be held as the sole source of payment for reasonable fees, costs, expenses, losses and liabilities of the Bank relating specifically to the Financed Project.

(c) The Agency and the Bank shall provide to the District evidence of all expenses to be paid from the Lease Contingency Fund. The District shall pay all such amounts owed to the Agency or the Bank, as applicable, within thirty (30) days of evidence of such expenses being submitted unless the District disputes such expenses. In the event of a dispute, the Executive Director of the District and/or the Executive Director of the Agency and the President of the Bank, as applicable, shall meet and attempt to resolve the dispute. In the event the dispute is not resolved the Boards of the District and/or the Agency and applicable Bank representatives shall meet to resolve the dispute. Any amounts due after resolution of a dispute shall be paid within thirty (30) days of such resolution.

(d) The \$250,000 held for reasonable attorneys' fees, costs and expenses of the Agency in Section 8.12(a) shall survive for five (5) years beyond the termination of this Lease, and if funds remain in the Lease Contingency Fund five (5) years after the termination of the Lease, such funds shall be released to the District. Following expiration or termination of this Lease, the District shall have no obligation to the Agency or the Bank, other than as specially provided and budgeted for in Section 8.12(a). The obligations to the Bank under Section 8.12(b) do not survive termination of this Lease.

Section 8.13 Additional Covenants. The District covenants that, during the Lease Term, it will:

(a) neither sell nor otherwise dispose of any property essential to the proper operation of the Financed Project or the maintenance of the Tax Receipts of the District, except as provided for in this Lease or the Note Purchase Agreement. This Section does not prohibit the District from selling or otherwise disposing of any property deemed to be surplus by the District. The District will not enter into any lease or agreement that impairs or impedes the operation of the Financed Project by the District or that impairs or impedes the rights of the Bank with respect to the Tax Receipts of the District;

(b) subject to the provisions of this Lease and the Condominium Documents, continue to operate the Financed Project in good repair and in an efficient and economical manner, making necessary and proper repairs and replacements so that the rights and security of the Bank will be fully protected and preserved;

(c) maintain proper accounts in accordance with generally accepted accounting principles of transactions relating to the Tax Receipts of the District; and

(d) keep or cause to be kept proper books of record and account in which full, true and correct entries will be made of all dealings or transactions of, or in relation to, the business and affairs of the District in accordance with generally accepted accounting principles.

(e) provide annual audited financial statements to the Agency and the Bank within the earlier of 30 days of issuance or 270 days from fiscal year end.

(f) provide annual budget to the Agency and the Bank upon acceptance and approval by the District Board.

(g) Maintain primary operating accounts and supporting bank services with the Bank.

ARTICLE IX ASSIGNMENT, SUBLEASING, PLEDGING AND SELLING

Section 9.1 Assignment and Subleasing. The District may not assign, transfer, encumber or sublease its rights to the Financed Project or this Lease except with the prior written consent of the Agency and the Bank, and subject to each of the following conditions:

(a) No assignment or subleasing shall relieve the District from primary liability for any of its obligations hereunder, and in the event of any such assignment or subleasing, the

District shall continue to remain primarily liable for payment of the Rent as specified in Section 5.3 hereof and for performance and observance of the other covenants and agreements on its part herein provided.

(b) No assignment or subleasing shall impair the exemption of interest on the Note from federal income taxation or the validity of the Note under State law.

(c) The assignee or sublessee shall assume in writing the obligations of the District hereunder to the extent of the interest assigned or subleased.

(d) The District shall, within 30 days after the delivery thereof, furnish or cause to be furnished to the Agency and the Bank a true and complete copy of each such assumption of obligations and assignment or sublease, as the case may be.

Section 9.2 Restrictions on Sale by Agency. The Agency agrees that, except as set forth in Article XI hereof or the Note Purchase Agreement, it will not sell, convey, mortgage, encumber or otherwise dispose of any part of the Financed Project (or its interest therein), so long as there is no event of default that has not been cured or an Event of Nonrenewal has not occurred.

ARTICLE X EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined. The following shall be “events of default” under this Lease and the term “event of default” shall mean, whenever it is used in this Lease, any one or more of the following events:

(a) Failure by the District to make any payment of Rent (following appropriation of such Rent as provided in Section 5.1) when the same shall become due and payable.

(b) Failure by the District to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Lease during the term hereof, other than as referred to in subsection (a) of this Section, for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, given to the District by the Agency or the Bank, provided, however, that in the event that such failure cannot reasonably be remedied within such 30 day period, the District has commenced such remedy during such 30 day period and diligently and continuously prosecutes the same to completion.

(c) The failure by the District promptly to commence proceedings to lift any execution, garnishment or attachment of such consequence as will impair its ability to carry on its operations at the Financed Project or to make any payments under this Lease, or the filing by the District of a petition seeking a composition of indebtedness under any applicable law or statute of the United States of America or of the State.

(d) The District admits insolvency or bankruptcy or its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors or applies for or consents to the appointment of a trustee or receiver for the Financed Project or if bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings for relief under any

bankruptcy law or similar law for the relief of debtors, are instituted by or against the District (other than bankruptcy proceedings instituted by the District against third parties), and if instituted against the District are allowed against the District or are consented to or are not dismissed, stayed or otherwise nullified within ninety days after such institution.

(e) An event of default caused by actions of the District under the Note Purchase Agreement shall have occurred and be continuing.

Section 10.2 Remedies on Default. Whenever any event of default referred to in Section 10.1 hereof shall have occurred and is continuing, and any applicable cure period has expired, the Agency, or the Bank, may take any one or more of the following remedial steps:

(1) The Bank may declare the Rent payable hereunder for the remainder of the Initial Term or the Renewal Term then in effect to be immediately due and payable, whereupon the same shall become due and payable. In no event shall the District be liable in an amount greater than the Rent payable for the remainder of the Initial Term or the Renewal Term then in effect.

(2) The Agency or the Bank may terminate the Lease Term and provide the District notice to vacate the Financed Project, or any portion thereof.

(3) The Agency or the Bank may reenter, repossess, lease part or all of the Financed Project to the extent permitted by law, and apply the proceeds thereof to the District's obligations hereunder.

(4) The Agency or the Bank may take whatever action at law or in equity as may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance or observance of the obligations, agreements, or covenants of the District creating the Event of Default.

In the event that the District fails to make any payment required hereby, the payment so in default shall continue as an obligation of the District until the amount in default shall have been fully paid.

Any moneys received by the Agency or the Bank from the exercise of any of the above remedies, after reimbursement of any reasonable costs incurred by the Agency and the Bank in connection therewith, shall be applied to satisfy the District's obligations hereunder.

Notwithstanding the exercise of any remedy, the Agency the Bank may make any disbursements after the happening of any one or more events of default without thereby waiving their right to accelerate payment of Rent and without liability to make other or further disbursements.

Section 10.3 No Duty to Mitigate Damages. Neither the Bank nor the Agency shall be required to do any act whatsoever or exercise any diligence whatsoever to mitigate the damages to the District if an event of default shall occur hereunder.

Section 10.4 No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency or the Bank is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

Section 10.5 No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Lease should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach waived and shall not be deemed to waive any other breach hereunder.

ARTICLE XI OPTIONS TO PURCHASE

Section 11.1 General Option to Purchase Financed Project. The District is hereby granted the option to purchase the Financed Project and to terminate the Lease Term at any time prior to the expiration of the Lease Term (collectively, the “**Option to Purchase**”). This Option to Purchase shall survive the termination of the Lease Term, as provided in Section 11.5 below. To exercise such Option to Purchase the District shall give written notice to the Agency, which shall specify the date of closing such purchase, which date shall be not less than forty-five (45) days from the date such notice is mailed. The District shall make arrangements satisfactory to the Bank for giving any required notice of prepayment relating to the Note.

Section 11.2 Purchase Price. The purchase price payable by the District in the event of its exercise of the Option to Purchase granted in Section 11.1 shall be the sum of the following:

- (a) An amount of money or Government Obligations which will be sufficient to either (at the District's option): (i) defease or prepay the Note in whole or any instrument issued to refund the Note on the specified prepayment date, including without limitation, principal, all interest to accrue to said prepayment date and prepayment premium and expenses; or (ii) to pay the principal of and interest on the Note or any instrument issued to refund the Note to and including the maturity date or dates thereof; and
- (b) An amount equal to the Agency's Fees and Expenses and the Bank Fees and Expenses accrued and to accrue until the final payment of the Note or any instrument issued to refund the Note; and
- (c) The sum of \$10 for the Financed Project.

Section 11.3 Option to Purchase Following Full Payment or Defeasance of the Note. Provided that the Note and any instrument issued to refund the Note shall have been paid in full or defeased in full, the District shall have the Option to Purchase the Financed Project. The District shall provide notice to the Agency of the exercise of its Option to Purchase under this Section 11.3 within sixty (60) days of full payment or defeasance of the Note. The closing

of the Option to Purchase shall take place within thirty (30) days following such notice. The purchase price payable by the District shall be the sum of the following:

- (a) An amount equal to any unpaid Agency's Fees and Expenses; and
- (b) The sum of \$10 for the Financed Project.

Section 11.4 Conveyance on Purchase. At the closing of any purchase pursuant to this Article XI, the Agency will, upon receipt of the purchase price, deliver to the District such documents and instruments as are reasonably requested by the District conveying to the District the Financed Project, in "as is" condition, free and clear of all liens, claims and encumbrances other than the Permitted Exceptions. The Agency shall convey the Financed Project to the District by special warranty deed. Additionally, the Agency and District will execute and record a termination of this Lease Agreement in the real property records of Ada County, Idaho.

The District, the Agency, and the Bank shall cooperate in executing such documents as are reasonably necessary to accomplish the purpose of this paragraph.

Section 11.5 Survival of Option to Purchase. The Option to Purchase the Financed Project pursuant to Section 11.1 and Section 11.3 shall survive the termination of the Lease Term and this Lease for a period of ninety (90) days following the time at which the Note or any instrument issued to refund the Note ceases to be outstanding.

Section 11.6 Recording of Option. On or before the Effective Date, but prior to recording this Lease, the parties shall memorialize this Option to Purchase in a separate Option to Purchase Agreement and shall record such separate Option to Purchase Agreement in the real property records of Ada County, Idaho

ARTICLE XII COVENANTS IN EVENT OF NONRENEWAL

Section 12.1 Cooperation Regarding Easements in Event of Nonrenewal. If an Event of Nonrenewal occurs and an Option to Purchase under Article XI has not been exercised, the Agency and the District hereby agree to cooperate in granting easements, licenses or the like to ensure access by both parties and their users from the Boise Centre to all portions of the Project.

ARTICLE XIII MISCELLANEOUS

Section 13.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered mail, postage prepaid, addressed as follows:

If to the District: Greater Boise Auditorium District
P.O. Box 1400
Boise, Idaho 83701
Attention: Pat Rice, Executive Director
Facsimile: 208.336.8803

With a copy to: Kimberly D. Maloney
Givens Pursley LLP
601 W. Bannock
Boise, Idaho 83701
Facsimile: 208.388.1300

With a copy to: Nicholas G. Miller
Hawley Troxell Ennis & Hawley LLP
877 Main Street, Suite 1000
Boise, Idaho 83702
Facsimile: 208.9545241

If to the Agency: Urban Renewal Agency of Boise City, Idaho
aka Capital City Development Corporation
121 N. 9th Street
P.O. Box 987
Boise, Idaho 83702
Attention: John Brunelle, Executive Director
Facsimile: 208.384.4267

With a copy to: Ryan P. Armbruster
Elam & Burke, P.A.
251 E. Front Street, Suite 300
P.O. Box 1539
Boise, Idaho 83701-1539
Facsimile: 208.384.5844

If to the Bank:

The Agency, the District, and the Bank may, by notice hereunder, designate any further or different address to which subsequent notices, certificates, or other communications shall be sent.

Section 13.2 Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the District and the Agency and their respective successors and assigns, subject, however, to the limitations contained herein.

Section 13.3 Severability. In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 13.4 Amendments, Changes. Except as otherwise provided in this Lease or in the Note Purchase Agreement, this Lease may not be effectively amended, changed, modified, altered or terminated without the written consent of the District, the Agency, and the Bank.

Section 13.5 Execution in Counterparts. This Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 13.6 No Offsets. The District shall pay all payments required hereunder, without abatement, deduction, offset or setoff other than those herein expressly provided. The District waives any and all existing and future claims and offsets against any payments required hereunder.

Section 13.7 Recording. The District shall cause this Lease and every assignment and modification hereof or an appropriate and sufficient memorandum thereof to be recorded in the office of the Recorder of Ada County, Idaho.

Section 13.8 Governing Law. This Lease shall be governed and construed in accordance with the law of the State.

Section 13.9 Surrender and Holding Over. At the end of, or the termination of, the Lease Term, unless one of the Options to Purchase is exercised, the District shall surrender and deliver to the Agency the possession of the Financed Project, together with all improvements constructed with Net Note Proceeds, free and clear of all liens and encumbrances other than Permitted Encumbrances, and in good condition subject to reasonable wear and tear.

The District shall be only a tenant at sufferance, whether or not the Agency accepts any Lease Payments from the District while the District is holding over without the Agency's written consent.

Section 13.10 Limitation of Liability of the District. No covenant or agreement contained in this Lease, the Note Purchase Agreement or the Note shall be deemed to be a covenant or agreement of any member, director, officer or employee of the District in an individual capacity. No recourse shall be had for any claim based on this Lease, the Note Purchase Agreement or the Note against any member, director, commissioner, officer or employee, past, present or future, of the District or of any successor body as such, either directly or through the District or any such successor body, under any constitutional provision, statute or rule of law or by the enforcement of any assessment or penalty or otherwise.

Section 13.11 Limitation of Liability of Agency. No covenant or agreement contained in this Lease, the Note Purchase Agreement or the Note shall be deemed to be a covenant or agreement of any member, director, commissioner, officer or employee of the Agency in an individual capacity. No recourse shall be had for any claim based on this Lease, the Note Purchase Agreement or the Note against any member, director, commissioner, officer or employee, past, present or future, of the Agency or of any successor body as such, either directly or through the Agency or any such successor body, under any constitutional provision, statute or rule of law or by the enforcement of any assessment or penalty or otherwise.

IN WITNESS WHEREOF, the Agency and the District have caused this Lease to be executed in their respective corporate names as of the date first above written.

GREATER BOISE AUDITORIUM DISTRICT

By: _____
Chairman

**URBAN RENEWAL AGENCY OF BOISE CITY,
IDAHO AKA CAPITAL CITY DEVELOPMENT
CORPORATION**

By: _____
Chairman

STATE OF IDAHO)
) ss.
County of Ada)

On this _____ day of _____, _____ before me, _____, a Notary Public in and for said State, personally appeared _____, known or identified to me to be the Chairman of the Board of Directors of the Greater Boise Auditorium District, and the person that executed the within instrument on behalf of the Greater Boise Auditorium District, and acknowledged to me that the Greater Boise Auditorium District executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for Idaho
Residing at _____
My commission expires _____

STATE OF IDAHO)
) ss.
County of Ada)

On this _____ day of _____, _____ before me, _____, a Notary Public in and for said State, personally appeared _____, known or identified to me to be the Chairman of the Board of Commissioners of the Urban Renewal Agency of Boise City, Idaho aka Capital City Development Corporation, and the person that executed the within instrument on behalf of the Urban Renewal Agency of Boise City, Idaho aka Capital City Development Corporation, and acknowledged to me that the Urban Renewal Agency of Boise City, Idaho aka Capital City Development Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for Idaho
Residing at _____
My commission expires _____

APPENDIX A

DEFINITIONS

“Act” means Chapter 49, Title 67, Idaho Code, as amended.

“Advance Rate” means the Bank’s prime rate plus 4.00%.

“Agency” means the Urban Renewal Agency of Boise City, Idaho aka Capital City Development Corporation, an independent public body politic and corporate constituting a public instrumentality of the State, organized and operating as an urban renewal agency of the City of Boise City under the Urban Renewal Law or any public corporation succeeding to its rights and obligations as permitted under this Lease.

“Agency Board” means the Board of Commissioners of the Agency.

“Agency Fees and Expenses” means a financing fee, payable upon issuance of the Note, and only if such Note is issued, in the amount of \$40,000, less a credit for the \$5,000 pre-financing fee and for so long as the Note, or any instrument issued to refund the Note, shall be outstanding and the Lease is in effect, an annual fee payable on December 1 of each year in arrears in the amount of \$5,000, and the actual reasonable and necessary out-of-pocket expenses incurred by Agency in connection with the Note and/or the ownership of the Financed Project.

“Acquisition Fund” means the Construction Fund created by the Note Purchase Agreement.

“Assignment of Purchase Agreement” means the Assignment of Purchase Agreement entered into between the District and the Agency whereby the District assigns, and the Agency accepts the assignment of, the District’s right to purchase the Financed Project under the Purchase Agreement.

“Authorized Representative” means, in the case of the Agency, the Executive Director and the Chair, in the case of the District, the Executive Director and the Chair, and, when used with reference to the performance of any act, the discharge of any duty or the execution of any certificate or other document, any officer, employee or other person authorized to perform such act, discharge such duty, or execute such certificate or other document.

“Bank” means Wells Fargo Bank, N.A., being the purchaser of the Note.

“Bank Fees and Expenses” means the reasonable and necessary fees and expenses of the Bank in connection with the Note as set forth in the Note Purchase Agreement

“Boise Centre” means the District’s existing convention center facilities.

“Centre Building” means that building to be constructed by the Developer on the South Parcel, which contains the Financed Project.

“Clearwater Building” means that building to be constructed by the Developer on the West Parcel, which shall contain, among other things, meeting space and ancillary facilities to be leased or purchased by the District.

“Code” means the Internal Revenue Code of 1986, as amended, regulations thereunder and rulings and judicial decisions interpreting it or construing it.

“Commencement Date” shall have the meaning given to such term in Section 3.2.

“Condominium Documents” means the Condominium Plat and Condominium Declaration for the City Center Plaza, which will govern the Financed Project.

“Consulting Architect” means the architect or engineer as may be designated by the Agency, or the District, acting as agent of the Agency, in writing.

“Consulting Architect Certificate” means an opinion or report signed by the Consulting Architect.

“Continuing Disclosure Undertaking” shall mean a Continuing Disclosure Undertaking with respect to the Note, executed by the District, and dated the date of delivery of the Note.

“Costs of Issuance” means the fees and expenses of issuance, sale and delivery of the Note, including, but not limited to (i) expenses incurred by the Agency and the District in connection with the issuance, sale and delivery of the Note and in connection with the preparation and execution of the Lease, and the Note Purchase Agreement, the fees and expenses of the Bank in connection with the issuance of the Note, bond insurance premiums, if any, title insurance, rating agency, legal, underwriting, consulting and accounting fees and expenses and printing, photocopying and engraving costs; and (ii) any sums required to reimburse the Agency or the District for advances made by either of them for any of the above items.

“Costs of Issuance Fund” means the Cost of Issuance Fund created by the Note Purchase Agreement.

“Debt Service Account” shall have the meaning set forth in the Note Purchase Agreement.

“Debt Service Reserve Account” shall have the meaning set forth in the Note Purchase Agreement.

“Debt Service Reserve Payments” shall have the meaning given to such term in Section 5.3.

“Deed of Trust” means the Deed of Trust and Assignment of Rents from the Agency to the Bank granting a security interest in the Financed Project.

“Developer” shall mean KC Gardner Company, L.C.

“District” means the Greater Boise Auditorium District, Ada County, State of Idaho, a public body organized and operating as an auditorium district pursuant to Chapter 49, Title 67, Idaho Code.

“District Board” means the Board of Directors of the District.

“Effective Date” means the date set forth in the first paragraph of this Lease.

“Environmental Law” means any federal, state or local environmental statute, regulation, or ordinance presently in effect or that may be promulgated in the future as such statutes, regulations and ordinances may be amended from time to time, including but not limited to the statutes listed below:

Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.

Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq.

Clean Air Act, 42 U.S.C. § 7401 et seq.

Federal Water Pollution Control Act (Clean Water Act of 1977), 33 U.S.C. § 1251 et seq.

Federal Insecticide, Fungicide, and Rodenticide Act (Federal Pesticide Act of 1978), 7 U.S.C. § 136 et seq.

Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.

Safe Drinking Water Act, 42 U.S.C. § 300f et seq.

“Event of Default” means any of the events specified in Section 10.1 of the Lease to be an Event of Default.

“Event of Nonrenewal” means the failure of the District to enter into a Renewal Term as provided in Section 5.1(b) of the Lease, provided that failure to enter into a Renewal Term subsequent to the exercise of an Option to Purchase shall not constitute an Event of Nonrenewal.

“Financed Project” shall mean the condominium units comprising the new ballroom facility, related kitchen and ancillary facilities, along with related soft costs and equipment to be constructed in the Centre Building.

“Funds” shall have the meaning set forth in the Note Purchase Agreement.

“Gardner MDA” shall mean the Amended and Restated Master Development Agreement between the Developer and the District, dated as of November 20, 2014, as such agreement is amended from time to time.

“Government Obligations” shall have the meaning set forth in the Note Purchase Agreement.

“Grove Plaza” means the plaza between the Project and the Boise Centre.

“Hazardous Substances” means any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous, toxic or radioactive substance, or other similar term, by Environmental Law.

“Initial Term” means the initial term of this Lease Agreement commencing on the Commencement Date and terminating on the following November 30.

“Insurance Consultant” means an independent person with recognized expertise on insurance matters selected by the District and approved by the Agency and accepted by the Bank.

“Investment Securities” shall mean any legal investments under the laws of the State of Idaho for moneys held hereunder.

“Lease or Lease Agreement” means this Lease Agreement and any amendments and supplements hereto made in conformity with the requirements hereof and of the Note Purchase Agreement.

“Lease Payment Fund” shall have the meaning set forth in the Note Purchase Agreement.

“Lease Payments” means the payments required to be made by the District pursuant to Section 5.3 of this Lease Agreement, and shown on Exhibit A.

“Lease Payment Date” means the annual payment date occurring in the first month of the District’s fiscal year and no later than December 31, as agreed to between the Agency, the District and the Bank in accordance with Section 5.3 of this Lease Agreement, and as further described on Exhibit A to the Lease Agreement.

“Lease Term” means the Initial Term and any applicable Renewal Term, subject to the provisions of this Lease Agreement, no one of which shall exceed one District fiscal year in length.

“Net Note Proceeds” means the Net Note Proceeds as defined in the Note Purchase Agreement.

“Net Proceeds” means, when used with respect to any insurance payment or condemnation award, the gross proceeds thereof less the expenses (including attorneys’ fees) incurred in collection of such gross proceeds.

“Note” means the Urban Renewal Agency of Boise City, Idaho aka Capital City Development Corporation Lease Revenue Note (Centre Building Project) issued pursuant to the Note Purchase Agreement.

“Note Purchase Agreement” means the Note Purchase Agreement providing for the issuance of the Note to be prepared in accordance with the Bank term sheet dated November 20, 2014.

“Notice of Intent to Renew” means the District’s notice of intent to renew the Lease for a Renewal Term, as required by Section 5.1(b) of this Lease Agreement.

“Occupancy Expenses” shall have the meaning given to such term in Section 5.3.

“Option to Purchase” means the Option to Purchase described in Article XI of this Lease Agreement and to be recorded pursuant to a separate option purchase agreement between the District and the Agency pursuant to which the District is granted an option to purchase the Financed Project.

“Payment Date” shall have the meaning set forth in the Note Purchase Agreement.

“Permitted Encumbrances” means, as of any particular time, (i) liens for taxes and special assessments on the Financed Project not then delinquent, (ii) this Lease Agreement and the Note Purchase Agreement, (iii) the Condominium Documents; (iv) purchase money security interests (except with respect to the equipment purchased with proceeds of the sale of the Note), (v) utility, access and other easements and rights of way, mineral rights, restrictions and exceptions that will not materially interfere with or impair the use of the Financed Project, (vi) mechanics’ liens, security interests or other encumbrances to the extent permitted in Section 6.1 of this Lease Agreement, (vii) such minor defects, irregularities, encumbrances, easements, rights of way and clouds on title as normally exist with respect to properties similar in character to the Financed Project and as do not in the aggregate materially impair the property affected thereby for the purpose for which it was acquired or is held by the Agency or the District, including the exceptions to title attached as Exhibit B to this Lease Agreement, or binding agreements to remove such easements or encumbrances have been executed, and (viii) other encumbrances approved in writing by the District and the Agency prior to the delivery of the Note.

“Project” means (i) renovation of the District’s existing convention center facilities, (ii) construction of a ballroom facility and related kitchen, meeting space, ancillary facilities, and an elevated concourse attaching the District’s existing facilities to the ballroom facility, and (iii) purchase of related furniture and equipment. The total estimated cost of the Project is \$38,000,000.

“Purchase Agreement” means the Purchase and Sale Agreement for the Centre Facilities, which is an agreement for the purchase and sale of the Financed Project entered into by and between the District and the Developer; as such agreement has been amended from time to time.

“Rebate Fund” shall mean the Rebate Fund created in the Note Purchase Agreement.

“Rebate Fund Payments” shall have the meaning given to such term in Section 5.3.

“Prepayments” shall have the meaning given to such term in Section 5.3.

“Renewal Term” means any renewal of this Lease Agreement by the District commencing on December 1 following the Initial Term or on any subsequent December 1, and terminating on the following November 30. Each Renewal Term shall be for no more than one year in duration. The final Renewal Term, if renewed by the District, shall commence December 1, 20__ and terminate November 30, 20__, unless this Lease Agreement shall be terminated earlier as provided in the Lease.

“Rent” means Lease Payments, Prepayments, Debt Service Reserve Payments, Rebate Fund Payments and Occupancy Expenses, all as defined in Section 5.3.

“Reserve Requirement” shall mean the lesser of (i) Maximum Annual Debt Service with respect to the Note, calculated as of the date of issuance of the Note, (ii) 125% of average annual Debt Service on the Note, calculated as of the date of issuance of the Note or (iii) 10% of the aggregate principal amount of the Note upon original issuance thereof; provided that the Reserve Requirement shall not exceed the amount permitted to be capitalized from the proceeds of the

Note under then applicable provisions of federal tax law in order to protect the tax-exempt status of interest on the Note.

“Revenue Fund” shall have the meaning set forth in the Note Purchase Agreement.

“South Parcel” means the real property upon which the Centre Building will be constructed.

“State” means the State of Idaho.

“Tax Receipts” means the amounts representing collections by the Idaho State Tax Commission of the hotel/motel room sales tax levied by the District in accordance with Idaho Code Section 67-4917B.

“Urban Renewal Law” means the Urban Renewal Law of 1965, constituting Chapters 20 and 29, Title 50, Idaho Code, inclusive, as amended.

“West Parcel” means the real property upon which the Clearwater Building will be constructed.

EXHIBIT A
LEASE PAYMENTS

EXHIBIT B
PERMITTED ENCUMBRANCES

PETITION EXHIBIT C
WELLS FARGO TERM SHEET



December 11, 2014

Mr. John Brunelle
Executive Director
Capital City Development Corporation
jbrunelle@ccdcoise.com

Mr. Patrick Rice
Executive Director
Greater Boise Auditorium District
pat_rice@boisecentre.com

Cc: eric.a.heringer@pjc.com
nmiller@hawleytroxell.com

Dear Mr. Brunelle and Mr. Rice,

Wells Fargo Bank, N.A. (the "Bank") is pleased to provide this proposed Term Sheet to the Greater Boise Auditorium District (the "District") and Capital City Development Corporation ("CCDC"). The proposed terms and general conditions are detailed in the "Summary of Proposed Terms and Conditions" and the "Response Form" attached as Appendix A.

Please acknowledge your acceptance of this proposed Term Sheet by signing in the places indicated at the conclusion of the "Summary of Proposed Terms and Conditions."

Wells Fargo is pleased to have the opportunity to support the District on this transaction and we look forward to a long and mutually beneficial relationship.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda K. Armstrong", written over a large, stylized loop.

Linda K. Armstrong
VP/Senior Relationship Manager

Cc: John Self
Mark Lliteras

Summary of Proposed Terms and Conditions

Lease Revenue Note

OBLIGOR/LESSEE: Greater Boise Auditorium District (the "District").

ISSUER/LESSOR: Capital City Development Corporation (the "CCDC").

LENDER: Wells Fargo Bank, N.A. ("Wells" or the "Bank").

CREDIT FACILITY: Up to \$23,500,000 for direct purchase, fixed rate, tax-exempt, Lease Revenue Note or Notes (the "Note").

Neither the Lease nor the Note constitutes indebtedness or multiple fiscal year direct or indirect obligation of the District within the meaning of any constitutional or statutory debt limitation. Neither the Lease nor the Note will directly or indirectly obligate the District to make any payments other than those which may be appropriated by the District for each District fiscal year. All obligations of the District under the Lease and the Note will terminate at the end of the Lease term following an event of non-appropriation.

PURPOSE: Proceeds of the Note will be used to (i) finance the acquisition of condominium units containing a new ballroom facility, related kitchen and ancillary facilities (see Project description below); (ii) finance acquisition of furniture, fixtures and equipment; (iii) fund a debt service reserve fund; and (iv) pay costs of issuance (the "Financed Project"). The following is a summary of the Use of Funds:

Acquire facility: \$19.1 million
FF&E, DS Reserve, COI: \$3.4 million – \$4.4 million

INITIAL TERM/
MANDATORY
TENDER DATE:

Initial term option of either 7 or 10 years.

AMORTIZATION
& MATURITY:

Amortization 20 years. The final maturity is not to exceed 120% of the weighted average economic life of the assets being financed.

INTEREST RATES:

The Note will contain a Fixed Rate Mode. An indicative interest rate for a 7-year term option is 2.25% and for a 10-year option is 2.65% as of October 31, 2014, calculated on a 360 day year.

The Fixed Rate is subject to change according to market conditions.

The Fixed Rate is subject to adjustment upon a) the occurrence of an event of taxability (see taxable rate below) and b) change in the maximum federal corporate tax rate.

AMORTIZATION:

Level annual principal and interest payments. Actual due date to be determined based on closing date and renewal date of the lease. Based on the terms and rates stated in this proposal the principal and interest payment due annually on the 7 year note would be \$1,472,089 and on the 10 year note would be \$1,528,900.

SECURITY
AND DOCUMENTATION

Agreement between Bank and CCDC (the "Agreement") and Deed of Trust and Assignment of Rents from CCDC to Bank (the "Deed of Trust") which shall (a)

assign annually appropriated Lease revenues paid by the District to CCDC under the Lease, and (b) grant a first lien on the Financed Project, until the Note has been fully repaid. Deed of Trust shall be junior and subject to an option by the District to purchase the Financed Project for \$10.00 at the time the Note has been fully satisfied, which option will be fully assignable by the District.

The Lease shall provide that, for each year in which the District renews the Lease, the District's obligation to make Lease payments will have a senior lien on the District's Room Tax.

DEBT SERVICE

RESERVE FUND ("DSRF"):

To be funded at closing with Note proceeds in an amount equal to the lesser of the following: (i) 10% of the par amount of the Note; (ii) 125 percent of average annual debt service on the Note; or, (iii) the maximum annual debt service on the Note. Upon each year's renewal of the Lease, if renewed at the sole discretion of the District, if there is a deficit in the DSRF based on the balance of the Note, upon appropriation the District agrees to replenish the DSRF as required to maintain the applicable metric as stated above based on the current balance of the Note. The District agrees if non-appropriation occurs all monies in the DSRF fund are relinquished and available for application to the Note.

LEASE PAYMENT FUND:

A fund, subject to the provisions of the documentation, will be established with a trustee to the satisfaction of the Bank to which shall be deposited the annually appropriated Lease payments in the first month of the District's fiscal year not later than December 31st. Said principal and interest payments, in the amounts determined upon sale of the Note, shall be deducted from the lease payment fund on the date due.

**PREPAYMENT
OPPORTUNITY:**

The District shall pay to the Bank a prepayment fee equal to (i) 3% of the principal amount prepaid if payment is received during the first year; (ii) 2% of the principal amount prepaid if payment is received during the second year; and (iii) 1% of the principal amount prepaid if payment is received during the third year. There shall be no prepayment fee for amounts prepaid after more than three years.

CLOSING FEE:

Closing fee will be .20% of par amount payable at closing.

OTHER FEES:

Usual and customary for this type of financing to be negotiated, provided that, except for an agreed-upon maximum, the District's obligation for any amendment fees, termination fees, trustee fees, attorney's fees (bond and Bank), and customary language regarding increased costs, capital adequacy and taxes shall not continue in the event the Lease is terminated through non-renewal, except for any expenses incurred prior to the lease termination and still outstanding.

Whether or not the transaction is executed, the District will pay all fees and expenses relating to the preparation of the financing documentation as incurred up to a maximum amount of \$60,000.00. The Bank will keep the District informed of any expenses incurred on a monthly basis.

Estimated Fees:

Bond Counsel	At cost
Bank Counsel	Range of \$20,000 to \$30,000
Trustee	At cost
Real Estate Fees	At cost

General Conditions

BANKING

RELATIONSHIP:

Continuance of the District's current banking relationship with Wells Fargo to include all primary operating accounts and supporting traditional banking services of the District, subject to any public bidding requirements of the District required by law not policy.

REPORTING

REQUIREMENTS:

Usual and customary for this type of financing, including but not limited to:

- 1) Annual audited financial statements to be received within the earlier of 30 days of issuance or 270 days from fiscal year end.
- 2) Annual budget to be received upon acceptance and approval by the District.

PRINCIPAL FINANCIAL

COVENANTS:

Usual and customary for this type of financing, including but not limited to the following; provided, however, the covenants are only in effect during the Lease term and will expire at the end of any Lease term following an event of non-appropriation.

1. The Lease shall provide that if the District renews the Lease, it will timely appropriate funds for the Lease Payments, and in the event it does not renew the Lease, the District will surrender possession of the Financed Project at the end of the current term of the Lease. The District and CCDC shall not allow additional liens on the pledged property, other than the lien in favor of the Bank.
2. The District will maintain at all times, key forms of insurance as applicable in an amount and form acceptable to the Bank. This may include but not be limited to physical damage insurance, earthquake, windstorm/hurricane, flood insurance, terrorism insurance, and liability insurance.
3. Business interruption insurance satisfactory to the Bank will be required that would continue full payments to Wells Fargo in the case of impairment of District operations, thus mitigating abatement.
4. Additional Note Test (ANT) - The Lease will require that the District may not provide a parity pledge of its room tax revenue to any other obligations unless the most recently audited room tax revenue provides a minimum of 1.75 times coverage of the combined annual obligations under the Lease, any other outstanding parity obligations and the annual payments for the proposed obligations and no material adverse impairment of the cash flow is known or forecast. The ANT coverage requirement will be a Maximum Annual Debt Service (MADS) test.

All of the requirements under this "General Conditions" category shall apply only so long as the Lease is in effect. The District has no post-termination obligations.

INCREASED COSTS AND CAPITAL ADEQUACY;

TAXES:

Customary for facilities of this type, including, without limitation, provisions concerning increased costs, taxes, changes in capital adequacy, capital requirements and other requirements of law (including Dodd-Frank Wall Street Reform and Consumer Protection Act and Basel III), or their interpretation, illegality, unavailability, and reserves without proration or offset and payments free and clear of withholding or other taxes.

TAXABLE RATE/

TAXABLE CONVERSION:

In case of a determination of taxability, the District will prepay the Note within 60 days with a premium so that the total amount of premium plus interest paid from

the date of taxability through the date of prepayment would be calculated at the tax-exempt rate multiplied by a tax-exempt factor currently estimated at 1.429 plus any other expenses incurred by the note holder as a result of the determination of taxability. Bank willing to offer a taxable rate to apply after a determination of taxability so long as the yield to the Bank for the taxable Note is maintained equivalent to the yield to the Bank of the tax-exempt Note.

RATE ADJUSTMENT:

In order that the note holder maintains a certain tax equivalent yield on its investment, the tax-exempt rate is subject to further adjustments (beyond the changes outlined in the paragraph above) in the event of further governmental legislation which adversely affects the tax equivalent yield to the note holder.

MANDATORY TENDER:

The Note will be subject to a mandatory tender to the District at the end of the initial Fixed Rate Mode. Current scheduled principal redemptions of the Note will also be required.

**CONDITIONS
PRECEDENT
TO CLOSING:**

Usual and customary for transactions of this nature including but not limited to:

- 1) Final approval of Bank.
- 2) No material adverse change in the assets, operations, condition (financial or otherwise) or prospects of the District, nor in the facts and information regarding such entities as represented to date prior to Closing.
- 3) Receipt of Opinion of Bond Counsel acceptable to the Bank, Bank Counsel and Trustee as to the validity of CCDC and District to enter into the contemplated transaction cited herein.
- 4) Disclosure of any pending or threatened litigation (with such pending or threatened litigation acceptable to the Bank).
- 5) Execution and delivery of the Lease, Agreement, Deed of Trust and any other financing documents and all certificates, authorizations and opinions requested in form and substance satisfactory to the Bank, with legal opinions to cover such matters as the Bank may require.
- 6) Payment of all fees, including but not limited to, appraisal fees, environmental report fees, legal fees and closing fees.
- 7) Receipt of Judicial Confirmation, satisfactory to Bank, of the District's ability under the Idaho Constitution to enter into the Lease.

**REPRESENTATIONS &
WARRANTIES:**

Usual and customary for transactions of this type, to include without limitation: (i) no declaration of bankruptcy within the past 7 years; (ii) loan documents not violating laws or existing agreements or requiring governmental, regulatory or other approvals; (iii) no material litigation; (iv) compliance with other laws and regulations; (v) to the District's knowledge, no adverse agreements, existing defaults or non-permitted liens on the real estate used as security; and (vi) financial statements true and correct.

EVENTS OF DEFAULT:

Usual and customary for transactions of this type, to include without limitation: (i) nonpayment of principal, interest, fees or other amounts when due under any of the loan documents, if such amounts were appropriated by the District; (ii) non-compliance with any representation or warranty; (iii) violation of any covenant continuing beyond any agreed cure period; (iv) default under any other debts; (v) bankruptcy or insolvency event or declaration of a moratorium; (vi) unpaid judgment; (vii) material adverse change; and (viii) invalidity of any of the loan documents. An event of non-appropriation shall not constitute an event of default but shall terminate the Lease and allow Bank to exercise the remedies in the Agreement and Deed of Trust.

DEFAULT RATE
FOR OVERDUE LEASE
PAYMENTS:

Wells Fargo Prime Rate plus 4.00%.

FEES, EXPENSES AND
INDEMNIFICATION:

Whether or not the Agreement is executed, the District will (a) pay all fees and expenses relating to preparation of the Bank documents, including fees of Bank Counsel unless the Agreement is not executed due to the Bank's withdrawal from the transaction at no fault of the District and (b) indemnify the Bank and its respective directors, officers and employees against all claims asserted and losses, liabilities and expenses incurred in connection with the transaction. This obligation will expire at the end of any Lease term following an event of non-appropriation. The maximum amount payable to the Bank under this provision will be \$100,000.00.

FUTURE MODIFICATIONS:

Prior to the execution of the Agreement and the Note, the terms, conditions and interest rates herein referenced, the financing and the par amount indicated herein and are subject to revision in the discretion of the Bank, including, without limitation, in the event that (i) the par amount changes; (ii) the transaction deviates materially from what was initially described in conjunction therewith; (iii) the proposed financing does not close (other than as a result of action/inaction by the Bank); or (iv) events occur resulting in a material disruption of the market.

NO ADVISORY
OR FIDUCIARY ROLE:

CCDC and District acknowledge and agree that: (i) the transaction contemplated by this term sheet is an arm's length, commercial transaction between CCDC and District and Wells Fargo Bank, N.A., in which Wells Fargo Bank, N.A. is acting solely as a principal and is not acting as a municipal advisor, financial advisor or fiduciary to the District; (ii) Wells Fargo Bank, N.A. has not assumed any advisory or fiduciary responsibility to CCDC and District with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether Wells Fargo Bank, N.A. or its affiliates have provided other services to the District on other matters); (iii) the only obligations Wells Fargo Bank, N.A. has to CCDC and District with respect to the transaction contemplated hereby expressly are set forth in this term sheet; and (iv) CCDC and District has consulted its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate.

TRANSFER PROVISIONS:

While the Bank is purchasing the Note for its own account without a current intention to transfer them, the Bank reserves the right in its sole discretion to assign, sell, pledge or participate interests in the Note without the consent of CCDC and/or District, subject to compliance with applicable securities laws.

LOAN TREATMENT:

Wells Fargo's purchase of the Note is conditioned on its ability to treat the Note as a loan for accounting purposes. To achieve this treatment, the following conditions must be met:

1. No rating can be assigned to the Note.
2. The Note must be delivered in physical form.
3. The physical Note must carry a legend referencing the transfer restrictions.
4. Wells Fargo's ability to transfer is limited to certain commercial bank Qualified Institutional Buyers.
5. The Note, if more than one, must have minimum denominations of not less than \$250,000.

EMMA AND RATING
AGENCY DISCLOSURE:

To maintain transparency with its existing note holders and the rating agencies, Wells Fargo requests that CCDC and District a) post the Agreement and Note on the MSRB's EMMA site following the closing of the transaction, provided that pricing and certain other information contained therein, as directed by the Bank, shall be redacted prior to such posting and b) deliver relevant financing documents to the rating agencies.


CONFIDENTIALITY:

This proposed Term Sheet is confidential and proprietary, and terms herein may not be disclosed without our prior written consent, except to your professional advisors in connection with this Financing or other independent auditors or accountants who agree to be bound by such confidentiality requirements, or as may be required by law.

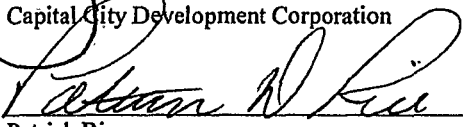
Notwithstanding anything herein to the contrary, any party hereto may disclose to any and all persons, without limitation of any kind the tax treatment or tax structure of this transaction. Furthermore, the parties to this transaction may disclose, as required by federal or state laws, any information as required to comply with such federal or state laws, including the ultimate financing documents, once executed, which may incorporate the terms of this proposed Term Sheet. The parties acknowledge that the contents of this proposed Term Sheet and its cover letter may be discussed at a public meeting of the District or CCDC, and that such contents will then be part of the public record. Further, if this proposed Term Sheet is signed by the District or CCDC, it will become a public document subject to public records requests. The Bank agrees that this proposed Term Sheet and its cover letter may be filed with the court in connection with the District's petition for judicial confirmation of the Lease, and that, at such time, the proposed Term Sheet and cover letter will become a public document.

This "Summary of Proposed Terms and Conditions" and the "Response Form" attached as Appendix A is for discussion purposes only and is not intended to be and should not be construed as an offer, a commitment to enter into a direct purchase of the Note, nor agreement to lend, nor should it be construed as an attempt to establish all of the terms and conditions relating to any loan or credit facility described herein. It is intended only to be indicative of certain terms and conditions around which credit approval may be sought, and if approved after additional financial and legal due diligence, how the loan documents might be structured, and shall not preclude negotiations over these or any other terms and conditions. Further, this proposed Term Sheet is contingent upon the District's receipt of Judicial Confirmation satisfactory to Bank, on the District's ability under the Idaho Constitution to enter into a proposed Lease Agreement (the "Lease") between CCDC and the District and a financing arrangement of this type. The execution versions of agreements containing final terms and conditions, if any, would be subject to approval by District and Bank. This proposal is subject to Wells Fargo formal credit approval process.

AGREED AND ACCEPTED:


John Brunelle
Executive Director
Capital City Development Corporation

12.15.14
Date


Patrick Rice
Executive Director
Greater Boise Auditorium District

12-16-14
Date

As these materials include information related to a bank-purchased bond transaction ("Direct Purchase"), please be advised that Direct Purchase is a product offering of Wells Fargo Bank, N.A. or a subsidiary thereof ("Purchaser") as purchaser / investor. Wells Fargo Securities will not participate in any manner in any Direct Purchase transaction between you and Purchaser, and Wells Fargo employees involved with a Direct Purchase transaction are not acting on behalf of or as representatives of Wells Fargo Securities. Information contained in this document regarding Direct Purchase is for discussion purposes only in anticipation of engaging in arm's length commercial transactions with you in which Purchaser would be acting solely as a principal to purchase securities from you or a conduit issuer, and not as a municipal advisor, financial advisor or fiduciary to you or any other person or entity regardless of whether Purchaser or an affiliate has or is currently acting as such on a separate transaction. Additionally, Purchaser, as purchaser / investor, has financial and other interests that differ from your interests. In its capacity as purchaser / investor, Purchaser's sole role would be to purchase securities from you (or the issuer in the case of a conduit transaction). Purchaser will not have any duty or liability to any person or entity in connection with the information provided herein. The information provided is not intended to be and should not be construed as "advice" within the meaning of Section 15B of the Securities Exchange Act of 1934.

APPENDIX A

RESPONSE FORM

***THE FOLLOWING INFORMATION WILL BE USED AS A BASIS FOR FURTHER
DISCUSSION AND POSSIBLE SELECTION OF A BANK TO COMPLETE THE
PROPOSED FINANCING.***

1. Name of Bank: Wells Fargo Bank, N.A.
2. Contact Name: Linda K. Armstrong
3. Contact Phone #: (208) 393-2009
4. Contact Email: linda.k.armstrong@wellsfargo.com
5. Provide an estimate of the interest rate on the Notes assuming interest rates as of October 21, 2014 for a 20-year, fixed rate Note. For evaluation purposes, assume a November 1, 2014 closing date with semi-annual note payments beginning on May 1, 2015. Level Amortization: See attached "Summary of Proposed Terms and Conditions."
6. Provide an estimate of bank closing costs including bank counsel fees if any (CCDC's Note Counsel will be preparing the financing and legal documents): See attached "Summary of Proposed Terms and Conditions."
7. Provide an estimate of any annual, on-going costs to maintain and/or service the Notes: See attached "Summary of Proposed Terms and Conditions."
8. Provide any significant terms, covenants and conditions of the proposed Notes not otherwise discussed (or that are substantially different than what is discussed) in the Term Sheet: See attached "Summary of Proposed Terms and Conditions."
9. Provide a list of no more than five public finance transactions that are similar in size, security structure (lease payments subject to appropriation) and/or issuer type to the financing contemplated herein. Include issue size, security type, issuer name, repayment term and the dated date of issue.

Client	Transaction Type	Closed	Term	State	Size
Board of Regents, State of IA, University of Iowa	Direct Purchase/	7/10/2013	10	IA	\$30,000,000
	Lease Revenue	7/10/2013	5	IA	\$ 2,450,000
Arvada Fire Protection District	Direct Purchase/ Lease Revenue	3/5/2013	10	CO	\$ 9,500,000
Board of Regents, State of IA, (taxable) University of Iowa	Direct Purchase/ Lease Revenue	7/10/2013	5	IA	\$ 8,000,000
State of South Dakota On Behalf of its Bureau Of Administration	Direct Purchase/	3/5/2014	6	SD	\$3,019,665
	Lease Revenue	3/2/2012	6	SD	\$2,834,392
Montrose Fire Protection District	Direct Purchase/ Lease Revenue	3/1/2012	10	CO	\$3,147,575

10. Provide an affirmative statement to the effect that: "The responding institution qualifies as a bank, a qualified institutional buyer, or an accredited investor. The responding institution is capable of providing an acceptable letter or certificate indicating that, as the prospective purchaser of the Note, it is experienced in transactions such as those related to the Notes and that the responding institution is knowledgeable and fully capable of independently evaluating the risks involved in investing in the Notes. Further, should the responding institution, as the prospective purchaser of the Notes, determine, subsequent to its purchase of the Notes, to sell, assign, or transfer the Notes, any such sale, assignment, or transfer will be made under these same conditions, constituting what is referred to as a "traveling letter." Wells Fargo Bank, N.A. affirms it meets the qualifications as outlined in question #10 of this Response Form and will abide by the provisions provided herein as advised and confirmed by its Bank Counsel upon review of the documentation for the proposed Financed Project.

PETITION EXHIBIT D
RESOLUTION TO PROCEED WITH JUDICIAL CONFIRMATION

c

A RESOLUTION OF THE BOARD OF DIRECTORS OF GREATER BOISE AUDITORIUM DISTRICT, MAKING FINDINGS AND DECLARATIONS WITH RESPECT TO THE FILING OF A NEW PETITION FOR JUDICIAL CONFIRMATION IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR ADA COUNTY; AND PROVIDING FOR RELATED MATTERS

WHEREAS, Greater Boise Auditorium District (the "District") is an auditorium district organized and operating pursuant to Title 67, Chapter 49 of the Idaho Code, as amended;

WHEREAS, the Greater Boise Auditorium District (the "District") is considering adoption of a resolution authorizing filing of a new Petition for Judicial Confirmation (the "New Petition") following denial of the District's Petition for Judicial Confirmation (the "Initial Petition") under Title 7, Chapter 13 of the Idaho Code, filed on June 11, 2014, in the Fourth Judicial District Court of the State of Idaho (the "District Court") under Case No. CV OT 1411320, to confirm the power of the District to enter into a lease agreement, as revised (the "Revised Lease") with the Urban Renewal Agency of Boise City, Idaho, aka Capital City Development Corporation (the "Agency"), the lease payments from which will secure a revenue note or similar instrument issued by the Agency (the "Note"). The purpose of the Revised Lease is to finance the purchase of certain condominium units containing a new ballroom facility, related kitchen, and ancillary facilities in the Centre Building to be constructed south of the existing U.S. Bank office tower in close proximity to the District's existing facilities to be operated by the District, along with related soft costs and equipment, plus related reserves and financing costs (the "Project");

WHEREAS, the District held a public hearing pursuant to Idaho Code § 7-1304 on November 5, 2014 at 1:00 p.m. (the "Public Hearing") to consider whether the District should adopt a resolution authorizing the filing of the New Petition;

WHEREAS, pursuant to Idaho Code §§ 7-1304 and 7-1306, notice of the public hearing was published in the Idaho Statesman in the main news section, far forward, at least 15 days prior to the date of the public hearing, and was provided to all persons requesting such notice via certified mail at least 14 days prior to the date of the public hearing;

WHEREAS, the testimony of the Public Hearing was recorded and a transcript thereof was prepared and delivered to the District, and a copy of said transcript is attached to this Resolution as Exhibit A;

WHEREAS, members of the Board, including those not in attendance at the Public Hearing, have had the opportunity to review the transcript and consider the testimony recorded at the Public Hearing;

WHEREAS, members of the Board have had the opportunity to ask questions of staff and legal counsel and have received responses to their questions concerning testimony at the Public Hearing that was given in opposition to the Project and the filing of the New Petition;

WHEREAS, the Board of Directors of the District (the "Board") previously approved a development agreement that was entered into on June 9, 2014 (the "Development Agreement"), between the District and the Agency, providing for, among other things, the acquisition of the Project, the role of the Agency as a conduit issuer, payment of expenses and the judicial confirmation process;

WHEREAS, certain revisions to the Development Agreement were approved by the Board at its meeting on October 15, 2014 pursuant to that certain Amended and Restated Development Agreement (the "Amended and Restated Development Agreement"), and it is in the best interest of the District to execute the same upon attachment of a substantially final form of the Revised Lease;

WHEREAS, the District approved the Revised Lease at its October 15, 2014 meeting, together with such changes thereto approved by the Board Chairman and Executive Director as shall be needed to finance the Project, and the Board authorized a copy of the Revised Lease be appended to the New Petition;

WHEREAS, the District and the Agency sought proposals from certain banks to purchase the Note to be issued to finance the Project and received a number of responses and the Revised Lease requires revisions to provide relevant financial terms once a bank is selected;

WHEREAS, the District desires to authorize legal counsel and the Executive Director to complete the relevant financial terms in the Revised Lease upon selection by the District of a bank, and to attach the substantially final Revised Lease to the Amended and Restated Development Agreement and the New Petition;

WHEREAS, the Note will be repaid through rental payments paid from the District to the Agency in accordance with the Revised Lease;

WHEREAS, the Board desires to approve the financing of the Project upon the District's receipt of a favorable judgment on the New Petition;

WHEREAS, the Board desires to approve the New Petition, in the form attached hereto as Exhibit B, and to authorize the filing of the New Petition in the District Court to confirm the power of the District to enter into the Revised Lease to secure payment of the Agency's Note financing the Project as more particularly described in the New Petition and to determine that that the Revised Lease is not a debt or obligation under Article VIII, §3 of the Idaho Constitution; and

NOW, THEREFORE, IT IS RESOLVED BY THE BOARD AS FOLLOWS:

Section 1. The New Petition, in the form attached hereto as Exhibit B, is hereby approved, and the Chairman of the Board of the District is authorized to execute the verification of the same, together with such changes as the Chairman of the Board shall approve in consultation with District legal counsel, and District legal counsel is hereby authorized to add the relevant financial terms to the Revised Lease once a bank is selected, and to file the New Petition on behalf of the District in the District Court, and to take all actions necessary with respect thereto in order to obtain a judgment of said District Court in accordance with the prayer of the New Petition.

Section 2. Subject to the entry of a final order of the District Court confirming the authority of the District as described in the New Petition, the District hereby authorizes the Revised Lease, substantially in the form approved at the October 15, 2014 meeting with such changes as are necessary to provide relevant financial terms once a bank is selected to purchase the Note.

Section 3. The District shall execute the Amended and Restated Development Agreement upon revision of the Revised Lease per Section 1 above.

Section 4. If any section, paragraph, clause or provision of the foregoing resolutions shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of the resolutions.

PASSED AND ADOPTED by Greater Boise Auditorium District on November 20, 2014.

APPROVED AND EXECUTED by the Chairman of the Board of Directors of the District, and attested by the Executive Director or the Secretary of the Board of Directors of the District, on this 20th day of November, 2014.

APPROVED:

By: J. C. Wahlen
Chairman

ATTEST:

By: Patricia J. Lee
Executive Director

Exhibit A
Hearing Transcript
[attached]

GREATER BOISE AUDITORIUM DISTRICT - PUBLIC HEARING

BOISE CENTRE

PUBLIC HEARING HELD IN THE PERCH ROOM

NOVEMBER 5, 2014

1:00 P.M.

ATTENDEES:

Jim Walker, Director

Judy Peavey-Derr, Director

Peter Oliver, Director

Steve Berch, Director

Pat Rice, Boise Centre

Ann Marie Downen, Boise Centre

Patrick J. Miller, Givens Pursley

Susan Eastlake, Secretary/Treasurer

REPORTED BY:

ANDREA L. CHECK, CSR No. 748, RPR

Notary Public

PROCEEDINGS

1
2
3
4 Mr. Walker: I'll go ahead and call this
5 meeting to order. We do have a quorum, and I'm going to
6 read some opening remarks.
7 The Board of Directors of the Greater Boise
8 Auditorium District is conducting a public hearing to
9 consider the adoption of a resolution authorizing the
10 filing of an amended or a new petition for judicial
11 confirmation, under Title 7, Chapter 13, of the Idaho
12 Code, in the Fourth Judicial District Court of the State
13 of Idaho, to obtain judicial examination and
14 determination of the validity of a proposed lease
15 obligation of the District.
16 A lease will be entered into to facilitate
17 acquisition of condominium units and a new building
18 containing a new ballroom facility, related kitchen and
19 ancillary facilities (The Project) to improve and expand
20 the District's existing convention center and public
21 event facilities in downtown Boise, specifically, if the
22 proposed transaction proceeds, Capital City Development
23 Corporation, Urban Renewal Agency, would issue revenue
24 bonds, the proceeds of which would be used to acquire
25 the project, which would then be leased to the District.

1 currently scheduled for November 20th, 2014.
2 The Board has appointed Pat Miller of Givens
3 Pursley to conduct the hearing. Mr. Miller will outline
4 the ground rules for the hearing.
5 Mr. Miller?
6 Mr. Miller: Thank you, Mr. Chairman.
7 My name is Pat Miller. The Board has asked me
8 to conduct this public hearing. This hearing is being
9 conducted under Idaho Code, Title 7, Chapter 13, and
10 specifically Section 1304, sub 3, of that chapter.
11 Today's date, for the record, is November 5th,
12 2014, so this public hearing is being held at least
13 14 days prior to the Board's meeting, which, as the
14 chairman just referenced, is currently scheduled for
15 November 20th, 2014.
16 As the chairman just described, the Board will
17 consider, at that meeting, a resolution authorizing the
18 filing of an amended petition or a new petition in the
19 Idaho District Court, under the judicial confirmation
20 law, to obtain judicial examination and determination of
21 the validity of the proposed lease obligations of the
22 District. All is more specifically described in the
23 notice of this meeting that was previously published,
24 and that notice was published in the Idaho Statesman.
25 My job is to ensure that those who wish to

1 The lease payments would be funded by the room
2 tax, and only the room tax, and would pay off the bonds.
3 The District will be requested to determine that the
4 lease is not an indebtedness or liability of the
5 District, as defined under Article VIII, Section 3, of
6 the Idaho Constitution, that the District may enter into
7 the lease without an election, and that such lease may
8 be payable with the District's receipts from hotel/motel
9 room tax received by the District pursuant to Idaho Code
10 Section 67-4917B and other reserves of the District.
11 The purpose of this public hearing is to hear
12 public comments as to whether the Board should adopt the
13 resolution authorizing the filing of the new amended
14 petition. Copies of the proposed lease are available
15 here at this meeting.
16 The judicial confirmation requires the Board
17 to conduct this hearing. The bond must consider public
18 input before it can be -- before it can authorize
19 judicial confirmation. Speaking on behalf of myself and
20 the rest of the Board, I want to say that we will listen
21 to your comments and concerns and take all of them into
22 consideration before voting.
23 We anticipate the resolution to authorize or
24 not authorize judicial confirmation will be considered
25 and acted upon at the next regular meeting of the Board,

1 speak here today have an opportunity to do so and to
2 keep the meeting focused on its primary purpose, of
3 allowing the Board to hear from interested citizens or
4 citizens groups.
5 I am conducting the hearing so that the Board
6 can focus on its function, which is to listen and
7 consider testimony. You may pose questions or issues
8 you wish the Board to consider in its deliberations;
9 however, the Board cannot and will not respond to any
10 testimony or any direct questions at this time.
11 A transcript of the hearing is being taken and
12 will be sent to the Board in just a few days; thus, the
13 Board will have ample opportunity to review all of the
14 comments and testimony presented today.
15 If questions are raised at this hearing about
16 which the Board wants further information before the
17 Board makes its decision, the Board will direct staff or
18 legal counsel to gather that information and present it
19 to the Board.
20 Now, everyone who wishes to speak here today
21 must sign up in advance, and that sign-up sheet is still
22 open if you wish to be heard. I have that here. If
23 anybody does wish to speak, I will limit speakers to
24 three minutes, to accommodate every person who does wish
25 to be heard.

1 I am going to keep time and will advise each
2 speaker when their time has been concluded. I'm going
3 to endeavor to alternate between pro and con, so that
4 testimony is balanced. When you are called to speak, I
5 ask that you come forward to the podium here, recite
6 your name, spell your last name for the record, and
7 commence with your remarks.

8 The hearing will end when each speaker who has
9 signed up -- or has been heard, and I have had an
10 opportunity -- or I've had opportunity to read into the
11 record any written submissions that the Board has
12 received.

13 This public hearing and the remarks by all of
14 the speakers are being recorded for the public record.
15 The transcript will be in accordance with the District's
16 public records policy.

17 Finally, before we start, if anybody has their
18 cell phones on, I'd ask that they be muted at this time.
19 And thank you.

20 So I will now ask if there's anybody else to
21 sign up? We have only one person signed up, and that
22 actually -- Mr. David Frazier was not able to be here
23 today, so he submitted comments in advance. So Mr. Rice
24 has signed up to read Mr. Frazier's remarks into the
25 record.

1 The same opposition was offered previously,
2 but the Board chose to seek judicial confirmation, and
3 the court agreed with me in its previous ruling. It is
4 my opinion, the only way to "address the court's
5 concerns" is with an election or cash payment. The
6 District has offered testimony that cash is not
7 available for the currently proposed project, so cash is
8 the alternative.

9 I have, quote/unquote, saved the citizens
10 millions upon millions of dollars on every issue in
11 which I have been a party. Public scrutiny is a
12 valuable component of the democratic process, both from
13 the economic and election standpoints.

14 Court Reporter: Can you read just a little
15 bit slower for me. Thank you.

16 Mr. Rice: Would you like me to repeat
17 anything?

18 Court Reporter: No, that's okay.

19 Mr. Rice: The "concerns" of the court are not
20 in some technical aspect of a lease or financial
21 agreement. The concerns are based on the Constitution
22 of the State of Idaho. My opposition serves to force
23 the court to examine ALL the issues, not just my
24 opposition. It is not the duty or purpose of either
25 Frazier or the court to help GBAD come up with some

1 And before I have Mr. -- ask Mr. Rice to read
2 those, I'll ask if there's anybody else that wishes to
3 sign up to speak today.

4 (No response.)

5 Mr. Miller: So let's let the record reflect
6 that there is no one here who has asked to speak or has
7 asked to sign up, so I will ask Mr. Rice to go ahead and
8 read Mr. Frazier's remarks into the record.

9 Mr. Rice?

10 Mr. Rice: Mr. Miller, members of the District
11 Board, my name is Patrick Rice, R-i-c-e, executive
12 director of the Auditorium District and Boise Centre,
13 and on behalf of Mr. David Frazier, I received an email
14 dated November 1, 2014 -- 2014, to the Greater Boise
15 Auditorium District, Boise, Idaho.

16 Ladies and gentlemen, my name is David R.
17 Frazier, F-r-a-z-i-e-r, and I live at 1921 Cataldo Drive
18 in Boise, within the District. I have been a resident
19 of the District since its inception.

20 I offer this written testimony in opposition
21 to your proposed financing of the proposed project to
22 expand the convention facilities without a vote of the
23 citizens, as mandated by the Idaho Constitution in
24 Article Section -- Article 3, Section -- I'm sorry --
25 Article VIII, Section 3.

1 wording that will allow the District to skirt the
2 voters. Frankly, our duty is to preserve the rights of
3 the citizens to vote and defend that constitution.

4 The election serves many purposes. It
5 illustrates the support or opposition of the voters for
6 the project. It is an important element in establishing
7 interest rates and borrowing ability and, if passed,
8 would remove the CCDC from the equation. There would be
9 no reason to use their borrowing authority. Most
10 importantly, the election is a constitutional mandate.
11 The constitution doesn't provide for a vote "except when
12 clever language is used in a contract or financing
13 scheme."

14 Thank you, David R. Frazier.

15 Mr. Miller: All right. Thank you, Mr. Rice,
16 for reading Mr. Frazier's written comments into the
17 record. And I do have a copy of that. We'll send that
18 along to the Board so they have a copy as well. But it
19 did appear to me that Mr. Rice did read that correctly,
20 but, again, the Board will also see a written copy of
21 that to assure that's the case.

22 Has anybody else come into the room now that
23 wishes to speak that has not signed up and would like an
24 opportunity to do so?

25 (No response.)

1 Mr. Miller: Okay. I don't see any, and so at
2 this time, I'm going to close the hearing. And so this
3 now concludes the judicial confirmation public hearing.

4 The record of the public hearing will not be
5 closed until next Friday, which is November 7th, for
6 anyone who wishes to submit comments in writing. The
7 Board appreciates being able to hear all of your
8 comments.

9 Mr. Chairman, I think I might have jumped on
10 you a little bit there, but if you want to --

11 Mr. Walker: I want to conclude by thanking
12 our hearing officer, Pat Miller, for conducting this
13 hearing for the District, and we thank you all for
14 coming.

15 We are adjourned.

16
17 (The Public Hearing adjourned at 1:10 p.m.)
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1 REPORTER'S CERTIFICATE.

2 I, ANDREA L. CHECK, CSR No. 748, Certified
3 Shorthand Reporter, certify;

4 That the foregoing proceedings were taken
5 before me at the time and place therein set forth;

6 That the foregoing proceedings were recorded
7 stenographically by me and transcribed by me or under my
8 direction;

9 That the foregoing is a true and correct
10 record of all testimony given, to the best of my
11 ability;

12 I further certify that I am not a relative or
13 employee of any attorney or party, nor am I financially
14 interested in the action.

15 IN WITNESS WHEREOF, I set my hand and seal
16 this 10th day of November, 2014.

17

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Andrea Check

ANDREA L. CHECK, C.S.R. No. 748, R.P.R.

Notary Public

P.O. Box 2636

Boise, Idaho 83701-2636

My Commission expires July 20, 2016.

Exhibit B
Form of Petition
[attached]

PETITION EXHIBIT E
NOTICE OF PUBLIC HEARING

LocalNews

IDAHO STATESMAN • IDAHOSTATESMAN.COM

NOTICE OF PUBLIC HEARING

NOTICE OF HEARING TO CONSIDER A RESOLUTION AUTHORIZING THE FILING OF AN AMENDED OR NEW PETITION FOR JUDICIAL CONFIRMATION UNDER THE IDAHO JUDICIAL CONFIRMATION LAW GREATER BOISE AUDITORIUM DISTRICT, STATE OF IDAHO

THIS NOTICE OF HEARING is provided pursuant to Idaho Code Section 7-1304. Notice is hereby given that the Board of Directors (the "Board") of the Greater Boise Auditorium District, Ada County, State of Idaho (the "District") shall conduct a public hearing to consider the adoption of a resolution authorizing filing either (a) an amendment (the "Amendment") to the District's Petition for Judicial Confirmation (the "Initial Petition") filed on June 11, 2014 as Case No. CV OT 1411320 under Title 7, Chapter 13 of the Idaho Code, in the Fourth Judicial District Court of the State of Idaho (the "District Court"), OR (b) in the District Court, a new petition for judicial confirmation action (the "New Petition"). The public hearing will be held on November 5, 2014, at 1:00 p.m., at District's administrative offices, 850 W. Front Street, Boise, Idaho.

The Initial Petition was filed in the District Court to obtain judicial examination and determination of the validity of a proposed lease obligation (the "Lease") of the District to lease and/or finance the purchase of certain condominium units containing a new ballroom facility, related kitchen, and ancillary facilities in the Centre Building to be constructed south of the existing U.S. Bank office tower in close proximity to the District's existing facilities, along with related soft costs and equipment, to fund a reserve fund, and to pay certain costs of issuing the Lease. The District Court denied the Initial Petition. The Lease has been revised in response to the District Court's denial (the "Revised Lease"), and at the public hearing, public testimony will be heard as to whether the Board should adopt a resolution authorizing the District to file the Amendment, or in the alternative the New Petition, to obtain judicial examination and determination of the validity of the Revised Lease. The District Court will be requested to determine that the Revised Lease is not an indebtedness or liability of the District as defined under Article VIII, Section 3 of the Idaho Constitution, that the District may enter into the Revised Lease without an election, and that the Revised Lease may be payable with the District's receipts from hotel/motel room tax collection, received by the District pursuant to Idaho Code Section 67-4914 and other revenues of the District.

Copies of the proposed Amendment and Revised Lease may be examined at the administrative offices of the District, located at 850 W. Front Street, Boise, Idaho, during regular business hours 8:00 a.m. to 5:00 p.m.

DATED: October 20, 2014

IDAHO STATESMAN

P.O. BOX, BOISE, ID 83707

LEGAL PROOF OF PUBLICATION

Account # 263959	DTI# 1346323	Identification LEGAL NOTICE	Amount \$577.50
Attention		P.O. # 628156	Run Dates October 20, 2014
HAWLEY TROXELL ENNIS HAWLEY LLP / LEGAL PO BOX 1617 BOISE, ID 83701-1617		Number of Lines 3x7	Affidavit 1
		Legal #	

KATHERINE SCHELLENBERG, being duly sworn, deposes and says: That she is the Principal Clerk of *The Idaho Statesman*, a daily newspaper printed and published at Boise, Ada County, State of Idaho, and having a general circulation therein, and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto: that said notice was published in far forward in the Main section as required by Idaho Code Section 7-1306

ONE

☐ consecutive weekly ☒ single
☐ consecutive daily ☐ odd skip
insertion(s)

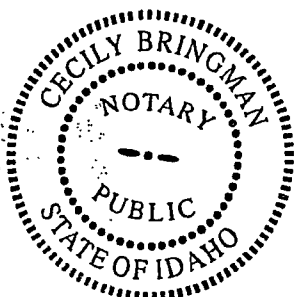
beginning issue of: October 20, 2014
ending issue of: October 20, 2014

Katherine Schellenberg

STATE OF IDAHO)
) SS
COUNTY OF ADA)

On this 22 day of October in the year of 2014
before me, a Notary Public, personally appeared before me
Katherine Schellenberg known or identified to me to be the person
whose name subscribed to the within instrument, and being
by me first duly sworn, declared that the statements therein
are true, and acknowledged to me that she executed the same.

Cecily Bringman
Notary Public for Idaho
Residing at: Boise, Idaho
My Commission expires 7-27-15



000131

JOHN L. RUNFT (ISB # 1059)
JON M. STEELE (ISB # 1911)
RUNFT & STEELE LAW OFFICES, PLLC
1020 W. Main Street, Suite 400
Boise, Idaho 83702
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Fax: (208) 343-3246
Email: JRunft@runftsteele.com

Attorneys for David Frazier

NO. 24 D 145
FILED 145
A.M. PM

JAN 09 2015

CHRISTOPHER D. RICH, Clerk
By JAMIE MARTIN
DEPUTY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

IN THE MATTER OF:)
GREATER BOISE AUDITORIUM) Case No. CV OT 1423695
DISTRICT,)
Petitioner.) **ANSWER TO PETITION FOR JUDICIAL**
) **CONFIRMATION**
) Pursuant to Idaho Code § 7-1307
)
) Filing Fee ~~\$66.00~~ **\$136.00**

COMES NOW, David R. Frazier, Respondent, by and through his attorney of record, John L. Runft, and pursuant to Idaho Code § 7-1304 submits his Answer to the Petition for Judicial Confirmation filed in the above entitled matter by the Greater Boise Auditorium District on December 19, 2014.

JURISDICTION AND STANDING

Jurisdiction in this matter is granted Petitioner and Respondent under the Judicial Confirmation Law, Idaho Code §§ 7-1301 et seq. Respondent admits that Petitioner is a public body and a subdivision of the State of Idaho organized and operating as an auditorium district pursuant to Idaho Code §§ 67- 4901, et seq. and is a political subdivision pursuant to Idaho Code § 7-1303.

Respondent is a citizen, property owner, taxpayer, elector, and resident at 1921 Cataldo Dr., Boise, Idaho 83705, in the Greater Boise Auditorium District who has standing in this matter as granted by I.C. § 7-1307. For over one-hundred years Idaho courts have entertained taxpayer or citizen challenges based upon Article VIII, Section 3 of the Idaho Constitution. *Koch v. Canyon County*, 145 Idaho 158, 162, 177 P.3d 372, 376 (2008); *City of Boise v. Frazier*, 143 Idaho 1, 137 P.3d 388 (2006). Respondent appeared and provided written testimony in opposition to the District's Resolution authorizing the filing of the subject Petition in the public hearing held pursuant to Idaho Code § 7-1306 on November 5, 2014. His testimony has been incorporated in the record of the hearing.

SUMMARY OF RESPONDENT'S OPPOSITION TO PETITION

Pursuant to the provisions of Idaho Code §§ 7-1301 et seq., Petitioner, Greater Boise Auditorium District, again seeks judicial confirmation of the validity of an annually renewable Lease Agreement, which will provide the revenue stream for the long term financing of the bonds to be issued by the Urban Renewal Agency of Boise City a/k/a Capital City Development Corporation ("Agency"). The District's previous Petition for judicial confirmation of the validity of essentially the same annually renewable Lease Agreement was rejected by the Idaho District Court of the Fourth District Court in *The Matter of the Greater Boise Auditorium District*, case No. CV OT 1411320, on August 29, 2014, pursuant to the Court's *Order denying Petition for Judicial Confirmation*, entered on August 28, 2014. A copy of the Court's Order (hereinafter "08-28-14 Order") is attached as Exhibit "A."

At issue is the method of financing the purchase of the subject Project by the District. As the financing vehicle for acquisition of the "Project," the revised Lease Agreement (in

conjunction with its working documents) is (again) alleged by Petitioner to be a valid obligation of the District under Article VIII, § 3 of the Idaho Constitution, because: (1) It purports to obligate the District only for an initial annual term corresponding to its fiscal year, (2) It is renewable or terminable each year through annual appropriation, budgeting, and affirmative notice of the intent to renew or terminate, and (3) There is no recourse (except for the Contingency Fund under §8.12) if the District elects not to renew for another year (terminate).

By virtue of this annual, renewable, terminable construct of the Lease, Petitioner claims that there is no long-term obligation created by the District. To the contrary, Respondent alleges that the revised Lease Agreement and related, integral documents proposed by Petitioner create a long-term obligation of the District and fail to overcome the deficiencies found by this Court in its 08-28-14 Order. These specific deficiencies, including a number of integrated, collateral long-term obligations, will be further explained in detail in subsequent briefing in this matter. In said Lease Agreement, the District admittedly seeks long term financing for the purchase of the (Project), along with related soft costs and equipment, which has an estimated cost of \$21,236,400 (collectively, the "Financed Project") and related reserves; (See revised Lease Agreement, p. 2). Respondent contends that this annual, renewable, terminable lease that runs for a period of 24 years in exchange for ownership in the District, based on the credit of the District, is in fact a long-term purchase agreement in disguise.

A key element of the multiparty transaction provides that the District will enter into a Purchase Agreement with the Developer to purchase the \$21,236,400 Financed Project prior to the anticipated assignment of said Purchase Agreement to the Agency. At that point, and by that act alone, the District has incurred an obligation and a liability far in excess of annual income and revenues, and accordingly has violated Article VIII, Section 8 of the Idaho Constitution.

Regardless of whether the assignment occurs immediately after the execution of the Purchase Agreement or at a later time after issuance of the bonds, the obligation has been contracted and the liability has been incurred, which serves to void the transaction at that point.

Nevertheless, the District has elected not to hold an election to obtain voter approval of the said long-term financing based on said Lease Agreement. Accordingly, Respondent claims that said financing scheme will violate the specific provision in Article VIII, § 3, of the Idaho Constitution prohibiting political subdivisions of the State from incurring any indebtedness or liability, other than for ordinary and necessary expenses, in excess of their income and revenue for the year without voter approval.

Moreover, Petitioner faces another dilemma from the standpoint that under its Lease provisions any “renewal” of the Lease constitutes a wholly new, independent lease. Each new Lease is *sui generis* and unrelated to the long term development of the Project. Each new Lease has no binding effect beyond the current term calendar year, and if not renewed, it terminates the right to renew, and, as the Lease itself provides: “no provision of the Lease shall survive termination.” (Lease, Article V.)

The Urban Renewal Law, Idaho Code § 50-2012, authorizes the Urban Renewal Agency of Boise City, aka Capital City Development Corporation (the “Agency”) to issue revenue notes and revenue bonds to finance said notes to facilitate projects pursuant to an adopted urban renewal plan in its area pursuant in accordance with to I.C. §§ 50-2007 and 50-2008. The subject Project is located within the Central District Urban Renewal Plan. The Agency is charged with implementing the Project as authorized under the Central District Urban Renewal Plan. Section 800 of The Central District Urban Renewal Plan provides that the Plan terminates on December 31, 2017, as follows:

Section 800 DURATION OF THIS PLAN

Except for the non-discrimination and non-segregation provisions which shall run in perpetuity, the provisions of this Plan shall be effective, and the provisions of other documents formulated pursuant to this Plan may be made effective, for thirty (30) years from the date of adoption of this Plan by the City Council through December 31, 2017, which date shall be deemed the termination date of the Plan, except for any revenue allocation proceeds received in the calendar year 2018.

As a result, the Agency is precluded from entering into any new contracts or leases, which has the effect of vitiating the financing scheme of the entire Project as well as the Petition.

Petitioner points out that Section 502 of the 2007 Central District Plan acknowledges the Agency's authority to issue lease revenue bonds with a bond term extending past the Plan termination date. But that is not the issue. Even though the Agency itself continues to operate, it must have an existing Plan in place in order to enter into new leases. (I.C. §§ 50-2007, 50-2008, and 50-2018 (12)). Respondent avers that after December 31, 2017, the Agency lacks the authority under the terminated Central District Plan to enter into any new, wholly independent leases with the District. The Petitioner is precluded from representing that repayment of the bonds will be made from rental payments due under "the Lease." There is no "the" Lease. And, there exists no authority in the Agency to enter into new, independent leases without an extant Plan. Petitioner cannot have it both ways.

RESPONSES TO SPECIFIC ALLEGATIONS OF PETITION

Respondent admits Petitioner's allegations contained in paragraphs 1 through 9.

Respondent admits Petitioner's allegations contained in paragraphs 10 and 11, subject to the restrictions imposed by Article VIII, § 3 of the Idaho Constitution.

Respondent admits Petitioner's allegations contained in paragraphs 12 and 13.

Respondent admits that the “Development Agreement” is attached to the Petition as Exhibit “A,” but is without sufficient information to otherwise respond to the balance of the allegations set forth in paragraph 14 and therefore, denies same.

Respondent admits Petitioner’s allegations contained in paragraph 15.

Respondent is without sufficient information to respond to alleged projected, future, estimated, and / or speculative events set forth in paragraphs 16 through 26, and therefore denies them, except that Respondent admits that Exhibits B and C exist and speak for themselves.

Respondent admits that Idaho Code § 67-4917B empowers the District as alleged in paragraph 27, but for lack of sufficient knowledge as to the verity of the balance of the allegations set forth in paragraph 27, denies same.

Respondent denies the allegations set forth in paragraph 28.

Respondent admits Petitioner’s allegations contained in paragraphs 29 through 31.

Respondent denies the allegations set forth in paragraph 32.

With regard to the allegations contained in paragraph 33, Respondent admits that Petitioner has exercised its statutory authority to approve a the subject Resolution and that a copy of the Resolution is attached as Exhibit D, but denies that the Resolution effectively authorizes the Petitioner to legally enter into the subject lease.

Respondent denies the allegations set forth in paragraph 34.

Respondent admits Petitioner’s allegations contained in paragraph 35.

With regard to the allegations contained in paragraph 36, Respondent reiterates its responses to paragraphs 1 through 35.

With regard to the allegations contained in paragraph 37, Respondent admits that Petitioner seeks a judicial determination as described, but denies that the subject Lease "is a valid obligation under Article VIII, §3 of the Idaho Constitution.

ATTORNEYS FEES

Respondent has been required to retain the services of counsel to assist him in preparation of his Answer herein as well as other pleadings and briefs as may be required in response to this Petition, and accordingly has retained the law firm of Runft & Steele Law Offices, PLLC, and has agreed to pay said attorneys a reasonable fee. Respondent is entitled to recover his reasonable costs and attorney's fees pursuant Idaho Code § 7-1313 and § 12-117.

WHEREFORE Respondent prays that the Court enter an order as follows:

1. Respondent respectfully asks the Court to dismiss the Petition for Judicial Confirmation;
2. For attorney fees pursuant to Idaho Code § 7-1313 and § 12-117; and
3. For such other and further relief as the Court deems just and proper.

DATED this 9th day of January, 2015

RUNFT & STEELE LAW OFFICES, PLLC

By: _____


JOHN L. RUNFT

Attorney for Respondent David Frazier

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 9th day of January 2015, a true and correct copy of the foregoing **ANSWER TO PETITION FOR JUDICIAL CONFIRMATION**, was served upon opposing counsel as follows:

Donald E. Knickrehm
Givens Pursley LLP
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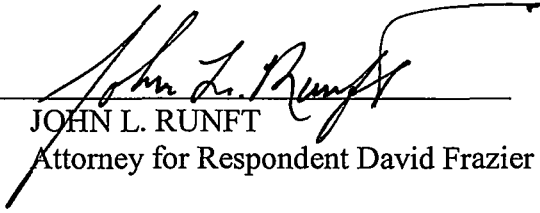
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RUNFT & STEELE LAW OFFICES, PLLC

By:


JOHN L. RUNFT

Attorney for Respondent David Frazier

EXHIBIT A

NO. _____
A.M. _____ P.M. 2:08

AUG 28 2014

CHRISTOPHER D. RICH, Clerk
By KIERSTEN HOUST
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF:

GREATER BOISE AUDITORIUM
DISTRICT,

Petitioner.

Case No. CV OT 1411320

ORDER DENYING PETITION FOR
JUDICIAL CONFIRMATION

Overview

Idaho's Constitution provides that, aside from ordinary and necessary expenses,

No county, city, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose . . .

Idaho Const. art. VIII, § 3.

Petitioner is a subdivision of the State of Idaho bound by this constitutional provision. Petitioner asks this Court to find that its proposed lease agreement does not constitute an indebtedness or liability within the meaning of article VIII, section 3, thereby relieving Petitioner of the requirement of submitting the proposed project to the voters for approval. Petitioner does not contend that its proposed lease falls within the

category of ordinary and necessary expenses; rather, Petitioner argues that the lease does not subject Petitioner to debt or liability beyond one year. For the reasons set forth below, the Court denies the petition for judicial confirmation.

Factual Findings

The Greater Boise Auditorium District ("District") operates the Boise Centre in downtown Boise. The District seeks to expand its 85,000 square foot convention center because the current facilities are too small to host large trade shows and regional and national conventions. The District has two related projects, only one of which is before the Court. Therefore, although the estimated cost of the entire project is \$38,000,000, the estimated cost of the project before the Court is \$21,236,400.

The project before the Court is the Centre Building, to be located between the Grove Hotel and U.S. Bank office tower in downtown Boise. The Centre Building will consist of build-to-suit condominium units, a new ballroom facility, and kitchen and banquet facilities.

The District proposes to finance the acquisition of the Centre Building by working with the Urban Renewal Agency of Boise City aka Capital City Development Corporation ("Agency"). According to the plan, K.C. Gardner Company, L.C. ("Developer") will sell the Centre Building to the District, which will assign its right to purchase to the Agency, which will issue revenue bonds on the District's behalf, and then use the bond money to purchase the Centre Building. The Agency will then lease the Centre Building to the District, whose rental payments to the Agency will fund the repayment of the principal and interest on the bonds. The District will use the money it collects from hotel and motel tax to make its rental payments to the Agency under the lease. The District may renew its lease for a total of twenty-four (24) consecutive one-

year renewal terms, purchase the Centre Building at any time, or terminate the lease at any time.

The project is outlined in these documents: the 20 page Master Development Agreement between the District and the Developer, the 27 page Lease Agreement between the District and the Agency, and the 9 page Development Agreement between the District and the Agency. Attached to the Master Development agreement are exhibits, including the legal description of the property, the site plan, the lease of meeting space, the option to purchase, the project budget, construction schedule, design contract, construction contract, and a blank Purchase and Sale Agreement, to be signed in December 2014 at the earliest. Certain documents integral to the plan's implementation - the Purchase and Sale Agreement and the Bond Resolution Act - are not before the Court. The District's "financial covenants" and "additional debt requirements" are also not before the Court.

The Master Development Agreement

The Master Development Agreement requires the District to:

1. Enter into a formal Purchase and Sale Agreement whereby the District will be obligated to purchase the Centre Building from the Developer. The District can assign this right to purchase to the Agency. Section 2.2
2. Provide two security deposits, each for 2.5 million, which operate "solely as a security for the District's performance of its purchase obligation for the Centre Facilities upon completion of construction by Gardner." Section 3.1.1. If the District or the Agency do not purchase the Centre Facilities, then the Developer retains the \$5,000,000 as liquidated damages.
3. Subordinate its interest in the project to a lender under certain conditions. Sections 3.1.2 - 3.1.3.
4. Indemnify the Developer for claims for bodily injury and property damage, including attorneys' fees, for the negligent acts or omissions of the District. Section 4.3.17.2

5. Pay attorneys' fees to the Developer, should the Developer successfully litigate an action connected with the Master Development Agreement. Section 9.15.

Under the Master Development Agreement, the project budget can increase if the Developer runs into hazardous materials, unforeseen legal entanglements, or emergencies that increase the cost of design or construction. Section 4.2.3.

The Development Agreement

The Development Agreement requires the District to:

1. Assign the Purchase Agreement to the Agency, which shall purchase the project following successful completion of the judicial confirmation proceedings and issuance of the bonds. Section 2.
2. Enter into the Lease Agreement with the Agency and pay the principal and interest due on the bonds "subject to the District's determination, in its discretion, to annually renew the Lease Agreement." Section 3.c.
3. Indemnify the Agency against "losses, costs, damages, expenses, and liabilities of whatsoever nature . . . and reasonable attorneys' fees," which indemnification provision "shall survive the expiration or termination of this Agreement." Section 6.
4. Pay the Agency:
 - a pre-financing fee of \$5,000 (Section 5(a)(i));
 - a \$40,000 financing fee for issuing the bonds, against which the \$5,000 would be credited (Section 5(a)(ii)); and
 - for so long as the bonds are outstanding and the Lease Agreement is in effect, an annual \$5,000 fee (Section 5(a)(iii));
 - all out of pocket costs, expenses and fees associated with issuing the bonds, or the project generally, which obligation shall survive the termination of the Agreement (Sections 5(b) and 10);
 - all taxes, assessments, licenses, fees, charges or other impositions levied based upon issuing bonds, which obligation shall survive the termination of the Agreement (Sections 7 and 10).
5. Pay charges or penalties assessed if the District unsuccessfully contests taxes, assessments or other charges. Sections 7 and 10.

The Development Agreement mentions that if the District defaults on its Agreement, the Agency has rights which accrue by reason of that default. Section 7. These rights are not specified or otherwise limited. The Development Agreement specifically provides both parties the right to sue, should the other party default. Section 9.

The Lease Agreement

Among other things, the Lease Agreement requires the District to:

1. Seek long term financing for the purchase the Unit which will contain the new ballroom facility, the related kitchen, and ancillary facilities in the Centre Building, along with related soft costs and equipment. Lease Agreement at 2.
2. Possibly secure the repayment of the bonds. It is unknown whether the District would be securing the repayment of bonds. The Executive Director of the District testified by affidavit that "the Lease Agreement and the Rent paid thereunder will be the security and sole source of payment for the Bonds, and not any other resources or credit of the Agency." Aff. Patrick Rice ¶ 13 at 5. However, the Lease Agreement states that the Bonds shall be secured by, "among other things, the Pledged Revenues as that term is defined in the Bond Resolution." Lease Agreement at 3. The Bond Resolution does not yet exist.
3. Engage in unidentified debt requirements. Article VIII, Section 8.13 of the Lease Agreement is a caption only. The caption is entitled: **"Additional Debt Requirements for the District."** The body of this section notes only "[to be determined with lender/bondholders]."
4. Take any action, or forgo taking any action, to avoid the result that the interest on the Bonds be included in gross income for federal income tax purposes or cause the interest on the Bonds to lose its exclusion from State income taxation under State law. Article IV, Section 4.6.
5. Pay rent to the Agency. If the District defaults on its rental payment, it is not simply liable for rent owed. In addition to collecting rent owed by the District, the Agency may enforce performance of any obligations, agreements, or covenants of the District under the Lease. Article X, Section 10.2 (emphasis added). In the event of a non-renewal by the District, the Lease Agreement notes that the Agency and the Trustee "may exercise the remedies provided herein and in the Bond Resolution." Article V, Section 5.1(b).

6. Pay "additional rent" to the Agency. Article V, Section 5.3(e).
7. Pay interest for any late or missing rental payments. Article V, Section 5.3(f).
8. Pay the rent on the particular project "prior to all other expenses of the District." Article V, Section 5.5 (emphasis added).
9. Under certain circumstances, pay any amounts required to cause the amount in the Debt Service Reserve Account to equal the Reserve Requirement for all outstanding Bonds which are secured by the Debt Service Reserve Account. Article V, Section 5.3(c).
10. Keep the property in good repair, making any necessary improvements. Article VI, Section 6.1.
11. Pay taxes on the property. Article VI, Section 6.2.
12. Insure the project each fiscal year. Article VI, Section 6.3.
13. Repair or rebuild the facilities if damaged or destroyed. Article VII, Section 7.1(a).
14. Indemnify the Agency against losses, costs, damages, expenses, and liabilities, including attorneys' fees, arising from claims, lawsuits, causes of actions, claims in equity, injunctive relief and other legal actions. By its own terms, this indemnification provision survives the expiration of the termination of the Agreement. Article VIII, Section 8.15.
15. Indemnify the Agency in any bankruptcy or arbitration proceeding arising from causes listed in the Lease Agreement. By its own terms, this indemnification provision survives the expiration of the termination of the Agreement. Article VIII, Section 8.16.
16. Forgo entering into any lease or agreement that impairs the rights of the bondholders during the lease term. Article VIII, Section 8.17(a).
17. Neither sell nor otherwise dispose of any property essential to the proper operation of the project of the Boise Centre during the lease term. Article VIII, Section 8.17(a).

18. Pay attorneys' fees to the Agency or the Trustee if the Agency or Trustee is a prevailing party against the District in a legal action related to the Lease Agreement. Article X, Section 10.5.

19. Waive future claims for offsets against any rent payments. Article XIII, Section 13.6.

If the District does not maintain insurance required by the Lease or does not keep the property in good repair, the District will owe money (including interest) to the Agency or the Trustee for its failure to do so, which money the "District agrees to pay on demand." Article VI, Section 6.5.

According to the Lease Agreement, "[n]o assignment or subleasing shall relieve the District from primary liability for any of its obligations." Article IX, Section 9.1(a). Even if the District assigns or sublets, it remains primarily liable for rent payments and continues to be liable for indemnification and insurance.

The Lease specifically notes that the Lease will terminate at the end of each annual term and will only be renewed by the District subject to legislative appropriation for that purpose.

Discussion

As a political subdivision of the State of Idaho, the District is subject to Idaho's Constitutional debt limitation. There is no dispute that the District has the statutory authority "to acquire, dispose of and encumber real and personal property" as proposed here. I.C. § 67-4912(f). The question is whether the District's twenty-four (24) year rent-to-own program complies with Idaho's Constitution.

Generally speaking, these types of leasing arrangements will be constitutional if liability is confined to each installment as it falls due, but not if the leasing agreement is a subterfuge for a sales contract wherein indebtedness or liability beyond one year

could arise. The California Supreme Court, writing in one of the few states whose constitutional language is similar to Idaho's,¹ has articulated the law thus:

It has been held generally in the numerous cases that have come before this court involving leases and agreements containing options to purchase that if the lease or other agreement is entered into in good faith and creates no immediate indebtedness for the aggregate installments there provided for but, on the contrary, confines liability to each installment as it falls due and each year's payment is for the consideration actually furnished that year, no violence is done to the constitutional provision. If however, the instrument creates a full and complete liability upon its execution, or if its designation as a 'lease' is a subterfuge and it is actually a conditional sales contract in which the 'rentals' are installment payments on the purchase price for the aggregate of which an immediate and present indebtedness or liability exceeding the constitutional limitation arises against the public entity, the contract is void.

Dean v. Kuchel, 218 P.2d 521, 522-23 (Cal. 1950) (internal citations omitted).

In this case, the leasing agreement may create a full and complete liability for the District upon its execution. It is not clear whether it does because the documents, read as a whole, are not clear. Respondent argued that a full and complete liability is created for the District upon execution because the Agency merely has the option, not the obligation, to purchase the Boise Centre. Section 2.2. of the Master Development Agreement supports this position. ("The PSA shall include the right of the District to assign it and the right to purchase therein provided to [the Agency].") Petitioner argued the opposite. Petitioner argued that the Agency has an obligation, not merely an option, to purchase the Boise Centre. Section 2 of the Development Agreement supports this

¹ California's Constitution provides, in relevant part:

No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters of the public entity voting at an election to be held for that purpose. . .

Cal. Const. art. XVI, § 18.

position. ("The Agency shall purchase the Financed Project . . .") The Lease Agreement could be read to reconcile these positions such that, upon execution, the District will have a full and complete liability, which the District will immediately assign to the Agency, and which the Agency intends to – and has bound itself to – accept from the District.² The Court concludes that the Lease Agreement does create a full and complete liability for the District upon execution.

The next key question is whether the lease acts as a subterfuge for what is actually a conditional sales contract. Although Idaho does not yet have an appellate case on point, Petitioner points out that "a majority of appellate courts in other states have held that leases subject to annual appropriation are not a prohibited indebtedness or liability under similar state constitutional provisions." Mem. Supp. Pet. for Judicial Confirmation at 11. Petitioner cites cases from Alaska, South Carolina, Alabama, California, Colorado, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Kansas, Kentucky, Maine, Michigan, Nebraska, Nevada, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin. Mem. Supp. Pet. for Judicial Confirmation, App. A. However, with the exception of California, Colorado, Oregon, and

² The Lease Agreement states:

As of the Effective Date, the District has assigned the Purchase and Sale Agreement for the Financed Project to the Agency. After issuance of the Bonds pursuant to Article IV hereof, and receipt of written consent from the District to proceed with the purchase of the Financed Project, the Agency shall, solely using funds from the Acquisition Fund, purchase the Financed Project from the Developer pursuant to the terms and conditions of the Purchase and Sale Agreement.

Article III, Section 3.1.

Wisconsin, the states cited do not have language in their state constitutions that is substantially similar to Idaho's.

Regardless of what other states have done, this Court is not charged with deciding whether the District's agreement complies with other states' constitutions. It may.³ The question is, of course, whether the District's agreement complies with Idaho's Constitution. Article VIII, section 3 of Idaho's Constitution has been narrowly interpreted by Idaho's appellate courts, which have resisted attempts to circumvent the Constitution's debt prohibitions. For example, in rejecting the special fund doctrine adopted by other states, the Idaho Supreme Court wrote:

The courts, to whose decisions we have above referred, have indulged in various subtleties and refinements of reasoning to show that no debt or indebtedness is incurred where a municipality buys certain property, and specifically provides that no liability shall be incurred on the part of the city, but that the property shall be paid for out of a special fund to be raised from the income and revenue from such property. The reasoning, however, of those cases utterly fails when applied to our Constitution, for the reason that none of those cases deals with the word 'liability,' which is used in our Constitution, and which is a much more sweeping and comprehensive term than the word 'indebtedness' nor are the words 'in any manner or for any purpose' given any special attention by the courts in the foregoing cases. The framers of our Constitution were not content

³ Then again, it may not. In a case cited by Petitioner, the Nebraska Supreme Court held that a lease provision violated Nebraska's Constitution where it required the State, upon termination of a year to year lease, to pay the costs of reletting the public facility or the costs to place the facility in a condition for reletting. The Court wrote that: "This kind of an open-ended promise violates the spirit and purpose of the constitutional limitation against indebtedness. . ." *Ruge v. State*, 267 N.W. 2d 748, 752 (Neb. 1978).

In this case, the District has not agreed to pay the costs of reletting the Boise Centre upon termination of the lease; however, it has undertaken an open-ended promise to remediate any violations of environmental laws (Lease Agreement, Article VIII, Section 8.16) and to promptly rebuild, repair or restore facilities damaged or destroyed by fire or other casualty (Lease Agreement, Article VII, Section 7.1). These open-ended promises violate the spirit and purpose of the constitutional limitation against indebtedness.

to say that no city shall incur any indebtedness 'in any manner or for any purpose,' but they rather preferred to say that no city shall incur any indebtedness or liability in any manner, or for any purpose. It must be clear to the ordinary mind, on reading this language that the framers of the Constitution meant to cover all kinds and character of debts and obligations for which a city may become bound, and to preclude circuitous and evasive methods of incurring debts and obligations to be met by the city or its inhabitants.

Feil v. City of Coeur d'Alene, 23 Idaho 32, 129 P. 643, 649-50 (1912), *superseded by statute*, H.J.R. No. 9 (November 7, 1950), *as recognized in Asson v. City of Burley*, 105 Idaho 432, 670 P.2d 839 (1983).

The language of Idaho's Constitution is exceptionally limiting:

No county, city, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose . . .

Idaho Const. art. VIII, § 3 (emphasis added).

Against this limiting constitutional language, strictly construed by Idaho's appellate courts, the District has attempted to craft unobjectionable financing for its Boise Centre. The strongest argument that Petitioner's plan complies with the Constitution is the "scot free" argument. As articulated by Petitioner's counsel at oral argument:

If at any point the District chooses not to budget and provides affirmative notice of its intent to renew, the District's obligations to make lease payments by the express terms of the lease will terminate and have no further liability. It can walk away scot-free. And that's set forth in Section No. 5.3 of the lease agreement, Your Honor.

Draft H'rg Tr. at 6:14-21 (Aug. 4, 2014).

Section 5.3 of the Lease Agreement supports Petitioner's argument. However, the documents as a whole do not. Although Petitioner characterizes the proposed lease as a "pay as you go" transaction, which subjects the District to no liability beyond any given year, the documents suggest that the District will indeed be liable beyond one year for more than simply rent.

Areas of ongoing liability are outlined in the factual findings above. They include, but are not limited to, the District's obligation to pay (1) all out of pocket costs, expenses and fees associated with issuing the bonds, or the project generally, which obligation shall survive the termination of the Agreement (Development Agreement, Sections 5(b) and 10) and (2) all taxes, assessments, licenses, fees, charges or other impositions levied based upon issuing bonds, which obligation shall survive the termination of the Agreement (Development Agreement, Sections 7 and 10). In addition, the District will be liable for indemnifying the Agency, the cost of ongoing insurance, and litigation costs. The indemnification and insurance clauses specifically survive the termination of the Lease Agreement.

At oral argument, the District's counsel took the position that, contrary to the plain language and expressed intent of the Lease Agreement, the clauses cannot survive the termination of the Agreement if the provisions fail. Counsel argued:

And [Respondent's] in a Catch 22 there, I would submit, Your Honor. Because if it is not permitted by law, then the whole thing fails. The fact that there's a survival provision that says this failed provision survives doesn't get you anywhere. Zero times zero is still zero.

Draft Hr'g Tr. at 42:19-24 (Aug. 4, 2014).

To reach the point where this argument begins, to even begin the process of multiplying zeroes, requires litigation. And should the District be on the losing side of the litigation interpreting the Lease Agreement, the litigation costs would be assessed against the District. The scot free argument is unavailing upon close examination of the documents as a whole.

Another argument in favor of the District's position is exigency. The government needs to be able to act. If courts construe Idaho's constitutional prohibition on debt and liabilities as narrowly as Respondent argues, then nothing can ever get done. In approving a lease-purchase agreement for new court facilities in Ada County, Judge Woodland put it this way:

First, Petitioners urge a broad interpretation of Article [VIII], § 3's concept of 'liability.' They have argued that Ada County has incurred liability by agreeing to indemnification provisions in the [Courts Complex Lease]. This is not the kind of liability Article [VIII], § 3 prohibits. If 'liability' were construed so broadly to encompass indemnification provisions, tort liability and the like, counties would be unable to take any action without a two-thirds vote of the electorate.

Mem. Supp. Pet. Judicial Confirmation (Exhibit E entitled *Order Granting Motion for Judgment on the Pleadings* at 8-9).⁴

Justice Jones' concurrence in *In re University Place/Idaho Water Center Project*, 146 Idaho 527, 547, 199 P.3d 102, 122 (2008), also supports this argument.

⁴ Petitioners relied on Judge Woodland's courthouse decision in their briefing (Mem. Supp. Pet. for Judicial Confirmation at 16) and at oral argument (Draft Hr'g Tr. at 12:7 – 13:4) (Aug. 4, 2014). Judge Woodland's decision relied, in part, on the statute of frauds in holding that there could not be a governmental "wink and a nod" promise to stay in the courthouse lease, pointing out that "[e]ven if such a promise existed it could not violate Article VIII, § 3 because it would be unenforceable under Idaho's Statute of Frauds. I.C. § 9-505(4)." Mem. Supp. Pet. Judicial Confirmation (Exhibit E entitled *Order Granting Motion for Judgment on the Pleadings* at 7). Interestingly, in this case, the parties "expressly and without reservation waive[d] any application of the Statute of Frauds in defeat of this Agreement or any of the Project Documents." Master Development Agreement, Section 2.7.

The district court apparently held the view that the performance under the allegedly novated contract was automatically disqualified as being comparable to the performance under the Foundation's contract because the Parking Access Agreement provided the University's parking lease was renewable each year and was subject to termination by the University in the event funds were not available. The fact of the matter is that all state contracts contain those same provisions because Article VIII, § 1 of the Idaho Constitution prohibits the State from incurring multi-year indebtedness without submitting the matter to the public for a vote. Article VIII §3 imposes a similar limitation on public indebtedness with respect to subdivision of state government. It is virtually impossible to present every multi-year governmental contract or lease to the public for a vote. Thus, leases and other contracts that are intended to extend beyond one year always contain provisions (1) making the government's performance subject to the availability of appropriated funds and (2) making the agreement renewable on an annual basis for the contemplated term.

Id. at 547, 199 P.3d at 122.

Recognizing that the government, including subdivisions, needs to be able to enter into long term contracts to function, it is important to note that it is not the twenty-four year nature of the proposed lease that presents a constitutional problem. Neither the long-term lease nor the appropriation contingency cause this Court concern. The devil is in the details. A painstaking review of all the documents before the Court reveals that the District is not free, as it insists, "to simply walk away." Reply Mem. Resp't's Resp. Pet. for Judicial Confirmation; Resp't's Reply to Mem. Supp. Pet. for Judicial Confirmation at 4. The District is free to pay, on an unlimited and open-ended basis, insurance, indemnification costs, litigation costs, taxes, the Agency's fees and costs for the project generally and the Agency's fees and costs for the issuance of bonds specifically.

Because the District's plan creates liabilities for the District beyond one year, the proposed plan needs voter approval to comply with article VIII, section 3 of the Constitution.

The Court has concluded that the lease agreement and accompanying documents subject the District to liability beyond one year. However, in addition, and as an alternative holding, the Court concludes that it cannot approve the proposed lease agreement because there are too many unknowns. These unknowns may be of no consequence, as argued by Petitioner, or they may subject the District to debt or liability beyond one year. These unknowns are: (1) the additional debt requirements for the District, to be determined with the lender/bondholders; (2) the District's "financial covenants" to be determined with lender/bondholders likely to include debt service coverage and other similar covenants; (3) the Purchase and Sale Agreement, to be signed no earlier than December 2014; and (4) the Bond Resolution Act.

At oral argument, Petitioner's counsel stated:

So I would say that the argument that somehow a purchase and sale agreement that's subject to a bunch of contingencies creates an indebtedness or liability is just wrong.

But even if it's right, I think the significant thing to note here is the District has enough cash that it could pay cash for this building, if it had to.

Draft Hr'g Tr. at 17: 14-21 (Aug. 4, 2014).

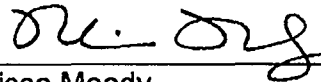
The Court concludes with these remarks because they are squarely in line with the language of Idaho's Constitution and the constitutional framers' intent: pay cash; otherwise, go to the people.

Conclusion

The District's petition for judicial confirmation is denied.

IT IS SO ORDERED.

DATED this 28th day of August 2014.

A handwritten signature in black ink, appearing to read 'Melissa Moody', is written over a horizontal line.

Melissa Moody
District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 28th day of August 2014, I mailed (served) a true and correct copy of the within instrument to:

Donald E. Knickrehm
GIVENS PURSLEY LLP
PO Box 2720
Boise, ID 83701-2720

() U.S. Mail, Postage Prepaid
() Interdepartmental Mail
(x) Electronic Mail
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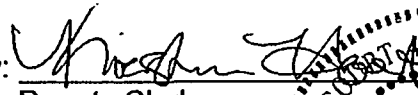
Nicholas G. Miller
Brad P. Miller
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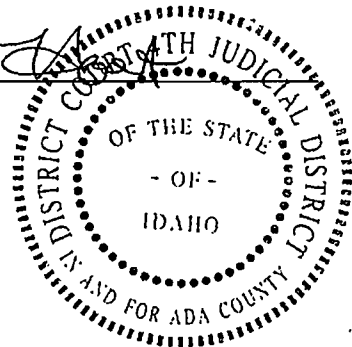
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RUNFT & STEELE LAW OFFICES, PLLC
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CHRISTOPHER D. RICH
Clerk of the District Court

By: 
Deputy Clerk



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Attorneys for Petitioner
Greater Boise Auditorium District

NO. _____
A.M. _____ FILED P.M. 419

JAN 20 2015

CHRISTOPHER D. RICH, Clerk
By TENILLE RAD
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF:

GREATER BOISE AUDITORIUM
DISTRICT,

PETITIONER.

)
) Case No. CV-OT-2014-23695

)
) NOTICE OF FILING PETITION FOR
) JUDICIAL CONFIRMATION AND NOTICE
) OF HEARING THEREON
)
)
)
)

NOTICE IS HEREBY GIVEN that Petitioner, Greater Boise Auditorium District, a public body organized and operating as an auditorium district pursuant to Idaho Code Title 67, Chapter 49 (hereinafter referred to as the "District") has filed its Petition for Judicial Confirmation in the above matter (the "Petition") pursuant to the Idaho Judicial Confirmation

NOTICE OF FILING PETITION FOR JUDICIAL CONFIRMATION AND NOTICE OF HEARING
THEREON - 1

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Law, Idaho Code § 7-1301 *et seq.*, requesting a judicial confirmation and determination of the power and authority of the District to enter into a Lease Agreement (Annual Appropriation) (the “Lease Agreement”) to finance the acquisition of certain condominium units containing a new ballroom facility, related kitchen and ancillary facilities along with related soft costs and equipment (the “Financed Project”), to improve and expand its existing convention center and public event facilities in downtown Boise known as the “Boise Centre,” based on the finding that the Lease Agreement is not an indebtedness or liability prohibited under Article VIII, §3 of the Idaho Constitution. The initial term of the Lease Agreement will end at the conclusion of the District’s fiscal year following commencement, and will be renewable for additional terms of one year only upon appropriation, budgeting and affirmative notice of the intent to renew the Lease Agreement by the District. The Petitioner estimates that the cost of the Financed Project will be approximately \$19,091,084, plus related soft costs and equipment, for a total Financed Project cost of approximately \$21,236,400, plus related reserves and financing costs.

The District has entered into an agreement with the Urban Renewal Agency of Boise City, Idaho, aka Capital City Development Corporation (the “Agency”), pursuant to which the Agency agrees to assist with the financing of the Financed Project. The District and the Agency have agreed that the District will assign, and the Agency will accept the assignment of, the District’s right to purchase the Financed Project under the master development agreement between the District and the developer of the Financed Project. The Agency intends to issue a lease revenue note (the “Note”) to finance its purchase of the Financed Project. Once purchased, the Agency will then lease the Financed Project to the District pursuant to the Lease Agreement. The Note will be repaid by the District’s lease payments under the Lease Agreement. The

District will pay lease payments under the Lease Agreement using a portion of the annual receipts from hotel/motel room sales tax levied and collected by the District pursuant to Idaho Code Section 67-4917B. Once the Note is paid in full, the Lease Agreement terminates and the Financed Project may be purchased by the District for a nominal amount.

The Lease Agreement is more particularly described in the Petition and Resolution of the District approving the Petition adopted on November 20, 2014 (the "Resolution"). Full and complete copies of the Petition, the Lease Agreement and the Resolution may be examined at the District's administrative offices located at 850 W. Front Street, Boise, Idaho.

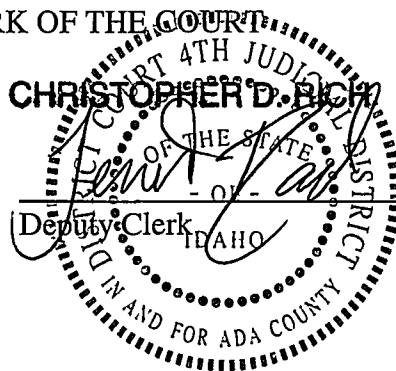
NOTICE IS FURTHER GIVEN that a hearing on the Petition shall be held on February 25, 2015, at 3:00 p.m. in the District Court at the Ada County Courthouse, 200 W. Front Street, Boise, Idaho before the Honorable Lynn G. Norton.

WITNESS my hand and the seal of the Court this 20 day of January, 2015.

CLERK OF THE COURT

CHRISTOPHER D. RICH

By:



1/22/15
ag

NO. _____
FILED _____
A.M. _____ P.M. 4:37

JAN 21 2015

CHRISTOPHER D. RICH, Clerk
By KATRINA HOLDEN
DEPUTY

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Attorneys for Petitioner
Greater Boise Auditorium District

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF:

GREATER BOISE AUDITORIUM
DISTRICT,

PETITIONER.

)
) Case No. CV-OT-2014-23695
)
) STIPULATION RE BRIEFING SCHEDULE
)
)
)
)
)
)
)

Petitioner, Greater Boise Auditorium District (the "Petitioner"), and Respondent, David R. Frazier (the "Respondent"), by and through their respective attorneys of record, hereby stipulate and agree as follows:

STIPULATION RE BRIEFING SCHEDULE - 1

05125.0016.7140351.4

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1. Hearing on the Petitioner's Petition for Judicial Confirmation (the "Hearing") has been set for **February 25, 2015 at 3:00 p.m.** before the Honorable Lynn G. Norton.

2. Any memoranda and / or affidavits in support of the Petition for Judicial Confirmation (the "Supporting Pleadings") shall be filed with the Court and served so that they are received by the Respondent no later than **January 26, 2015**.

3. It shall not be necessary for Respondent to file any memoranda and / or affidavits in response to the Petition for Judicial Confirmation (the "Petition") and the Supporting Pleadings (the "Responsive Pleadings"), but if Respondent elects to do so, said Responsive Pleadings shall be filed with the Court and served so that they are received by the Petitioner no later than **February 11, 2015**.

4. Any memoranda and / or affidavits in reply to the Responsive Pleadings shall be filed with the Court and served so that they are received by the Respondent no later than **February 18, 2015**.


5. Except as to the matters set forth herein, the Idaho Rules of Civil Procedure shall govern in matters of pleading and practice.

6. Nothing herein shall bind or prejudice any respondent not a party to this Stipulation.

DATED THIS 21st day of January, 2015.

Sirens Parsley, LLP
~~HAWLEY TROXELL ENNIS & HAWLEY LLP~~

By


Donald E. Knickrehm, ISB No. 1288
Attorneys for Petitioner
Greater Boise Auditorium District

DATED THIS 20th day of January, 2015.

RUNFT & STEELE LAW OFFICES, PLLC

By John L. Runft
John L. Runft ISB No. 1059
Attorneys for Respondent
David Frazier

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of January, 2015, I caused to be served a true copy of the foregoing STIPULATION RE BRIEFING SCHEDULE by the method indicated below, and addressed to each of the following:

John L. Runft, Esq.
Runft & Steele Law Offices, PLLC
1020 W. Main St., Ste. 400
Boise, ID 83702

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ E-mail
☐ Telecopy

Donald E. Knickrehm
Donald E. Knickrehm

JAN 26 2015

CHRISTOPHER D. RICH, Clerk
By STACEY LAFFERTY
DEPUTY

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Attorneys for Petitioner
Greater Boise Auditorium District

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF:)
) Case No. CV-OT-2014-23695
)
GREATER BOISE AUDITORIUM) MEMORANDUM IN SUPPORT OF
DISTRICT,) PETITION FOR JUDICIAL
) CONFIRMATION
PETITIONER.)
_____)

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AFFIDAVITS IN SUPPORT

1. Affidavit of Posting, Mailing and Publishing of Notice of Public Hearing and of Posting and Publishing of Notice of Filing Petition for Judicial Confirmation and Notice of Hearing Thereon
2. Affidavit of Patrick Rice in Support of Petition for Judicial Confirmation
3. Affidavit of John Brunelle in Support of Petition for Judicial Confirmation
4. Affidavit of David Wali in Support of Petition for Judicial Confirmation
5. Affidavit of Linda Armstrong, as a Representative of Wells Fargo Bank, N.A. Re: Petition for Judicial Confirmation

Petitioner, Greater Boise Auditorium District (the “District”), filed its Petition for Judicial Confirmation (“*Petition*”) pursuant to Idaho Code § 7-1301 seeking judicial confirmation of its authority to enter into a lease agreement to finance the acquisition of certain condominium units containing a new ballroom facility, related kitchen and ancillary facilities along with related soft costs and equipment (the “Financed Project”), to improve and expand its existing convention center and public event facilities in downtown Boise (the “Boise Centre”). This Memorandum is supported by the affidavits listed above, each of which has been filed concurrently herewith.

I.

BACKGROUND

A. The District

The District is a public body organized and operating as an auditorium district pursuant to Idaho Code Title 67, Chapter 49 (the “Act”), and as such is a “political subdivision” within the definition contained in Idaho Code § 7-1303(6). *Affidavit of Patrick Rice in Support of Petition for Judicial Confirmation*, ¶ 5 (herein “*Rice Affidavit*”). The District was formed effective June 9, 1959 by the vote of the electorate of Ada County and encompasses the boundaries of approximately the city limits of the City of Boise, the City of Garden City and portions of the City of Meridian and the City of Eagle, and of Ada County lying east of Eagle Road, south of Floating Feather Road, west of the conjunction of Warm Springs Avenue and Gowen Road, and north of Columbia Road. *Id.* The District is governed by a Board of Directors elected at large by the voters residing within the boundaries of the District (the “Board”). *See* Idaho Code § 67-4912. The Board exercises management, control and supervision of all the business and affairs of the District. Idaho Code § 67-4912(h). The Act authorizes the District to acquire, operate and maintain public convention and auditorium facilities within the boundaries

of the District. *See* Idaho Code § 67-4912. The District currently operates the Boise Centre, an 85,000 square foot convention center and public event facility in downtown Boise. *Rice Affidavit*, ¶ 7. The District intends to maintain its current ballroom and kitchen facilities at the Boise Centre following completion of the Financed Project. *Rice Affidavit*, ¶ 25.

To effectuate the general powers of the District, the Act further authorizes the Board to “acquire, dispose of and encumber real and personal property, and any interest therein, including leases and easements within the district,” Idaho Code § 67-4912(f), and empowers the District to contract for the leasing of improvements to be constructed upon property owned by the District or otherwise. Section 67-4922A, Idaho Code, provides, in pertinent part:

[An Auditorium District] board may contract for the leasing of improvements to be constructed upon premises owned by the district or otherwise, and the contract may also provide that at the expiration of the term of the lease, upon full performance of such lease by the district, the improvements and/or real estate, or so much thereof as is leased, may become the property of the district.

In order to provide funding for its operations and to effectuate its purposes, the District levies and collects hotel/motel room sales tax in the amount of five percent (5%) of the receipts derived from hotels and motels within the District, in accordance with Section 67-4917B of the Act (the “Room Tax”). *Rice Affidavit*, ¶ 6.

B. The Expansion of the Boise Centre

The District, in accordance with the Act as set forth in Section I.A above, has the authority to build, operate, maintain and market convention centers. The District, pursuant to such authority, has decided to expand its existing convention center facilities, including acquisition of the Financed Project, to be operated by the District as an addition to the Boise Centre. *See Rice Affidavit*, ¶ 8. The District has entered into an Amended and Restated Master Development Agreement dated November 20, 2014 (the “Gardner MDA”) with K.C. Gardner

Company, L.C. (the “Developer”) under which the Developer will build-to-suit the Financed Project as condominium units in a new building, to be known as the “Centre Building,” to the south of the existing U.S. Bank office tower. *Rice Affidavit*, ¶ 9; *Affidavit of David Wali in Support of Petition for Judicial Confirmation*, ¶ 2 (herein “*Wali Affidavit*”). The District estimates that the cost of acquiring the Financed Project will be approximately \$19,091,084, plus related soft costs and equipment, for a total Financed Project cost of approximately \$21,236,400 plus related reserves and financing costs. *Rice Affidavit*, ¶ 29.

Pursuant to the Gardner MDA, upon satisfaction of certain conditions, including agreement on the final design and specifications, and the guaranteed maximum price, which agreement is estimated to occur in May 2015, the District will enter into a Purchase Agreement with the Developer for the purchase of the Financed Project (the “Purchase Agreement”) under which the District will be obligated to purchase the Financed Project upon, but not before, completion of construction.¹ *Rice Affidavit*, ¶ 10. The District and the Developer expect completion of construction to occur in July 2016. *Rice Affidavit*, ¶ 10; *Wali Affidavit* ¶ 2.

II.

FINANCING OF THE FINANCED PROJECT

A. The Urban Renewal Agency

Although the District has broad powers to lease, including lease to own as described above, the Act authorizes an auditorium district to issue bonds only if backed by property taxes,

¹ Although Respondent’s *Answer* questions the constitutional validity of the District’s obligations under the Gardner MDA, the Judicial Confirmation Law, Idaho Code § 7-1301 *et seq.*, contemplates that the District, in its discretion, need only submit for judicial examination issues about which its powers are unsettled in the law and where a counterparty to the obligation requires judicial review. The Developer has not required judicial review of the Gardner MDA whereas Wells Fargo has required judicial review of the Lease Agreement. *See* discussion at page 9 herein. Simply, the obligations of the District under the Gardner MDA are not before court.

and yet the District does not qualify as an auditorium district that can levy property taxes because it serves an area with a population greater than 25,000. *See* Idaho Code §§ 67-4912(o), 67-4921; *Rice Affidavit*, ¶ 5. Consequently, to structure a financing transaction, the District needs to contract with another entity that has both the power to act as the owner and landlord under the lease and the power to issue bonds or notes. An urban renewal agency established under Title 50, Chapters 20 and 29, Idaho Code (collectively, the “Urban Renewal Law”) is such an entity.² Idaho Code § 67-4912(d) provides that the District may enter into contracts and agreements with governmental entities and cooperate with one or more of them to build, erect, market, or construct facilities within the District. Section 50-2015, Idaho Code, further authorizes the District to dedicate, sell, convey or lease any of its property to an urban renewal agency, to incur the entire expense of an urban renewal project, and to enter into such sale, conveyance, lease or agreement with the urban renewal agency without appraisal, public notice, advertisement or public bidding.

On December 19, 2014, the District and the Urban Renewal Agency of Boise City, Idaho, aka Capital City Development Corporation (the “Agency”) entered into an Amended and Restated Development Agreement (the “Development Agreement”) pursuant to which the Agency has agreed to employ the foregoing described statutory powers in connection with the financing of the Financed Project. *Rice Affidavit*, ¶ 11; *Affidavit of John Brunelle in Support of Petition for Judicial Confirmation*, ¶ 7 (herein “*Brunelle Affidavit*”). The Agency is an urban renewal agency of the City of Boise City, Idaho, organized and operating pursuant to the Urban Renewal Law. *Brunelle Affidavit*, ¶ 5. Pursuant to the Development Agreement, the District

² Under Idaho Code §§ 50-2012 and 50-2018(15), an urban renewal agency may issue notes secured with the income, proceeds, revenues and funds of the agency derived from the project financed and may mortgage any urban renewal project so financed.

and the Agency have agreed that the District will assign, and the Agency will accept the assignment of, the District's right to purchase the Financed Project under the Purchase Agreement, and, following successful completion of the Judicial Confirmation Proceedings, the District and the Agency will execute and deliver an Assignment and Assumption Agreement in substantially the form attached to the Development Agreement to so provide. *Rice Affidavit*, ¶ 12; *Brunelle Affidavit*, ¶ 8. In order to provide the funds needed for the Agency's purchase of the Financed Project, the Agency has agreed to issue a promissory note to Wells Fargo (the "Note"), as further described in Section II.C below. *Id.* In this way, the Agency, using the proceeds from the Note, will purchase the Financed Project from the Developer and become the owner of the same. *Rice Affidavit*, ¶ 13; *Brunelle Affidavit*, ¶ 9. The Agency will then lease the Financed Project to the District under a Lease Agreement (Annual Appropriation) (the "Lease Agreement"), a draft of which is attached as Exhibit B to the *Petition*. *Rice Affidavit*, ¶ 14; *Brunelle Affidavit*, ¶ 10. The Note is payable by the Agency solely from lease payments paid by the District to the Agency under the Lease Agreement (the "Lease Payments"). *Rice Affidavit*, ¶ 15; *Brunelle Affidavit*, ¶ 11.

B. The Lease Agreement

The Lease Agreement is subject to annual appropriation and budgeting of funds by the District. *Rice Affidavit*, ¶ 16; *Brunelle Affidavit*, ¶ 12; see also *Petition*, Exhibit B, Lease Agreement. The initial term of the Lease Agreement begins on the "Commencement Date" as defined in the Lease Agreement and, if not renewed by the District, will end at the conclusion of the District's fiscal year, November 30, following the Commencement Date (the "Initial Term"). *Rice Affidavit*, ¶ 16; *Brunelle Affidavit*, ¶ 12. The Lease Agreement is renewable for subsequent one-year terms only upon appropriation, budgeting and affirmative notice by the

District of its intent to renew the Lease Agreement. *Id.* In this regard, Section 5.1 of the Lease Agreement states, in pertinent part:

(b) At any time during the Initial Term and during each Renewal Term thereafter, the District may, in its sole discretion, renew this Lease for the next subsequent Renewal Term by budgeting funds to pay Rent for such Renewal Term and by giving Notice of Intent to Renew to the Agency. The Notice of Intent to Renew shall be accompanied by a certified copy of the resolution or other official action of the District Board adopting its budget which includes the expenditure of funds for Rent for the Renewal Term. In the event the Agency shall not have received the Notice of Intent to Renew by November 1 of any year, the Agency will notify the District of such non-receipt, and the District shall then have until November 15 to deliver to the Agency its Notice of Intent to Renew.

(c) If the District does not deliver the Notice of Intent to Renew by November 15 of any year, or if the District shall at any time notify the Agency that the District has elected to not renew this Lease for an additional Renewal Term, an Event of Nonrenewal shall be deemed to have occurred. Upon an Event of Nonrenewal, the Lease shall terminate on November 30 of the then current year and, except for the provisions of Section 8.12 herein, no provision of the Lease shall survive termination.

Petition, Exhibit B, Lease Agreement § 5.1(b), (c). In addition, Section 5.3 of the Lease Agreement expressly provides that the obligations thereunder are only for the current fiscal year stating: “[t]he obligation of the District to pay Lease Payments, Prepayments, Debt Service Reserve Payments, Rebate Fund Payments and Occupancy Expenses (collectively, “Rent”) begins on the Commencement Date and extends only through the Initial Term and any Renewal Term, if the Lease is so renewed at the sole option of the District pursuant to Section 5.1.”

Petition, Exhibit B, Lease Agreement § 5.3. The District’s exercise of its unilateral option to renew continues the Lease Agreement for an additional Renewal Term on the same terms, conditions and covenants. See *Petition*, Exhibit B, Lease Agreement § 5.1; *Rice Affidavit*, ¶ 16; *Brunelle Affidavit*, ¶ 12. The Agency is bound by the Lease Agreement for as long as the District renews with no option to terminate except in the event of a default by the

District. See *Petition*, Exhibit B, Lease Agreement §§ 3.3, 5.1, & 10.2; *Rice Affidavit*, ¶ 16; *Brunelle Affidavit*, ¶ 12. If the District renews the Lease Agreement for sufficient years that the Note is paid in full, the Lease Agreement terminates and the District has the right to purchase the Financed Project for a nominal sum. *Petition*, Exhibit B, Lease Agreement § 11.3; *Rice Affidavit*, ¶ 17; *Brunelle Affidavit*, ¶ 13. The District also has the right to purchase the Financed Project, and thus terminate the Lease Agreement, at any time upon payment of a purchase price equal to the unpaid principal and interest due on the Note. *Petition*, Exhibit B, Lease Agreement § 11.2; *Rice Affidavit*, ¶ 17; *Brunelle Affidavit*, ¶ 13.

However, if the District elects not to renew the Lease Agreement (an “Event of Nonrenewal”), the Lease Agreement shall terminate on November 30 of the then current year and the District shall have no further indebtedness or liability thereunder. *Petition*, Exhibit B, Lease Agreement §§ 5.1(c), 5.3; *Rice Affidavit*, ¶ 18; *Brunelle Affidavit*, ¶ 14. In order to ensure that all of its obligations under the Lease Agreement are terminated in an Event of Nonrenewal, the District, by Resolution of its Board dated December 18, 2014 and as required by Section 8.12 of the Lease Agreement, has set aside, pledged and committed the amount of \$250,000 to be held in a “Lease Contingency Fund” as the sole source of payment for all claims of the Agency under the Lease Agreement, including such claims as may survive the District’s termination of the Lease Agreement.³ *Rice Affidavit*, ¶ 19; see also *Brunelle Affidavit*, ¶ 15. The Agency has no other recourse against the District except to such Fund. *Id.* If funds remain in the Lease Contingency Fund five (5) years after the termination of the Lease, such funds shall

³ The District has additionally set aside, pledged and committed \$100,000 to the Lease Contingency Fund to be held as the sole source of payment for all claims of the Bank relating to the Financed Project (the “Bank Contingency”). The Bank Contingency differs from the amounts held in the Lease Contingency Fund for the claims of the Agency in that it does not survive termination of the Lease Agreement. *Petition*, Exhibit B, Lease Agreement § 8.12(d); see also *Petition*, Exhibit C, Term Sheet, p.6.

be released to the District. *Id.* Additionally, as required by Section 6.2 of the Lease Agreement, the District must maintain commercial general liability insurance occurrence coverage for the Financed Project. *Petition*, Exhibit B, Lease Agreement § 6.2; *Rice Affidavit*, ¶ 21; *Brunelle Affidavit*, ¶ 16. Accordingly, the District shall have insurance coverage for any incident occurring during the Lease Term (as defined in the Lease Agreement), even following an Event of Nonrenewal. *Id.*

Finally, in connection with the financing of the Financed Project, the Agency will grant to the District a separate and additional option to purchase the Financed Project for a nominal sum once the Note has been paid in full (the “Option”). *Petition*, Exhibit B, Lease Agreement, Article XI; *Rice Affidavit*, ¶ 22; *Brunelle Affidavit*, ¶ 17. The Option shall survive termination of the Lease Agreement in an Event of Nonrenewal. *Petition*, Exhibit B, Lease Agreement, § 11.5; *Rice Affidavit*, ¶ 22; *Brunelle Affidavit*, ¶ 17. In this way, even in an Event of Nonrenewal, the District preserves the benefit of any Lease Payments it has made prior to the Event of Nonrenewal.

C. The Financing

In October 2014, the District and the Agency jointly issued a request for proposals (the “RFP”) to solicit interest from certain financial firms in financing the Financed Project. *Rice Affidavit*, ¶ 23; *Brunelle Affidavit*, ¶ 18. The request for proposals identified the transaction structure described above--i.e, that the Agency would issue the Note payable solely from the revenues derived from the District’s Lease Payments under the Lease Agreement. *Id.* As a result of the RFP, Wells Fargo Bank, N.A., Boise office (“Wells Fargo”) proposed a term sheet, a copy of which is attached to the *Petition* as Exhibit C (the “Term Sheet”) specifying the terms and conditions upon which Wells Fargo would purchase the Agency’s Note to provide financing for the Financed Project plus related reserves and financing costs. *Id.*; see also *Affidavit of*

}

Linda Armstrong, as a Representative of Wells Fargo Bank, N.A. Re: Petition for Judicial Confirmation, ¶ 4 (herein “*Armstrong Affidavit*”). The Agency approved the Term Sheet and authorized the execution of the same at the meeting of its governing board held on December 15, 2014. *Brunelle Affidavit*, ¶ 18. The District ratified the execution of the Term Sheet at the meeting of its Board held on December 18, 2014. *Rice Affidavit*, ¶ 23.

Wells Fargo has reviewed the Lease Agreement and understands that the Lease Payments constitute the source of payment for the Note. *Armstrong Affidavit* ¶¶ 3, 5, & 7. The Term Sheet acknowledges that the District’s obligation to make payments under the Lease Agreement is subject to annual renewal and appropriation and that the District may terminate the Lease Agreement at the end of any annual term with no further obligation. *Petition* Exhibit C, Term Sheet, p.2; *Armstrong Affidavit* ¶ 5; *Rice Affidavit*, ¶ 24; *Brunelle Affidavit*, ¶ 19. To secure repayment of the Note, the Agency will grant to Wells Fargo a Deed of Trust and Assignment of Rents (“Deed of Trust”) which shall (a) assign to the bank the Lease Payments paid by the District under the Lease Agreement and (b) grant a first lien on the Financed Project, until the Note has been fully repaid. *Petition* Exhibit C, Term Sheet, p.2-3; *Rice Affidavit*, ¶ 24; *Brunelle Affidavit*, ¶ 19. The Deed of Trust will be junior and subject to the Option held by the District. *Id.*

Among the “Conditions Precedent to Closing” in the Term Sheet is “(7) Receipt of Judicial Confirmation, satisfactory to Bank, of the District’s ability under the Idaho Constitution to enter into the Lease.” *Armstrong Affidavit* ¶ 5. Upon a favorable ruling on the District’s *Petition*, and in accordance with the Development Agreement and Lease Agreement, the Agency will issue the Note. See *Rice Affidavit*, ¶ 12; *Brunelle Affidavit*, ¶ 8. The Note will be issued for an amount sufficient to provide funds to purchase the Financed Project, and the Lease Agreement, in turn, will provide for Lease Payments sufficient to enable the Agency to pay all

principal and interest coming due on the Note. *Rice Affidavit*, ¶ 15; *Brunelle Affidavit*, ¶ 11. The District's estimated Lease Payments under the Lease Agreement are significantly exceeded by the Room Tax receipts of the District. *Rice Affidavit*, ¶ 28; see also *Armstrong Affidavit* ¶ 6.

III.

BASIS FOR JUDICIAL DETERMINATION

The District has not held an election to obtain voter approval of the District's authority to enter into the Lease Agreement and related documents. *Rice Affidavit*, ¶ 26. Although the District is subject to the debt limitations contained in Article VIII, § 3 of the Idaho Constitution, an election is not required because the Lease Agreement does not obligate the District beyond its current fiscal year. *Id.* The Lease Agreement will terminate at the end of the District's fiscal year unless renewed for a subsequent one-year term upon appropriation, budgeting and affirmative notice by the District of its intent to renew. *Rice Affidavit*, ¶ 16; *Brunelle Affidavit*, ¶ 12. Should the District elect for any reason not to appropriate and provide affirmative notice of intent to renew the Lease Agreement the District would incur no indebtedness or liability as a result, and will have no further obligation beyond the District's current fiscal year. *Rice Affidavit*, ¶ 18; *Brunelle Affidavit*, ¶ 14.

IV.

QUESTION PRESENTED

Whether the Petitioner has the power and authority to enter into the Lease Agreement based on the finding that such Lease Agreement is not a debt or obligation under Article VIII, §3 of the Idaho Constitution.

V.

**THE COURT HAS JURISDICTION BECAUSE THIS ACTION WAS PROPERLY
INSTITUTED IN ACCORDANCE WITH IDAHO CODE §§ 7-1301-1313**

A. Judicial Confirmation Law

The District is a public body organized and operating pursuant to the Act. *Rice Affidavit*,

¶ 5. As such, it is a "political subdivision" under Idaho Code § 7-1303(6). *Id.*

Idaho Code § 7-1302(1) provides:

An early judicial examination into and determination of the validity of the power of any political subdivision to issue bonds or obligations and execute any agreements or security instruments therefor promotes the health, comfort, safety, convenience and welfare of the people of the state.

In furtherance of such declaration, the Legislature enacted Idaho Code § 7-1304, as amended, which allows the filing of a petition for judicial confirmation of any proposed agreement or obligation of any political subdivision.

The District has complied with the procedural requirements required by the Judicial Confirmation Law, Idaho Code § 7-1301 *et seq.*, to be completed prior to filing the *Petition. Affidavit of Posting, Mailing and Publishing of Notice of Public Hearing and of Posting and Publishing of Notice of Filing Petition for Judicial Confirmation and Notice of Hearing Thereon*, ¶¶ 3, 4, 5 (herein "*Affidavit of Posting*"); see also *Petition* at ¶ 35; Idaho Code §§ 7-1304(3), 1306.

Section 1305 of Title 7 of the Idaho Code provides that a judicial confirmation action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested may be had and is complete and sufficient after further post-petition appropriate publication and posting. *See also* Idaho Code §§ 7-1306(3), 7-1308(1). All such publication and posting of the Notice of Filing Petition for Judicial Confirmation and Notice of Hearing Thereon have occurred or will

have occurred prior to the hearing scheduled for February 25, 2015. *Affidavit of Posting* ¶¶ 6, 7. Accordingly, the District has complied with notice provisions in good faith.

Any owner of property, taxpayer, elector or ratepayer within the political subdivision, or any other person who has an interest in the obligation or agreement, may appear in the action. Idaho Code § 7-1307. Once jurisdiction has been obtained through filing of the *Petition* and proper publication and posting of notice, the Court “shall examine into and determine all matters and things affecting each question submitted, shall make such findings with reference thereto and render such judgment and decree thereon as the case warrants.” Idaho Code § 7-1308(1).

VI.

ARGUMENT

A. The Lease Payments do not violate Article VIII, § 3 of the Idaho Constitution because the Lease Agreement does not obligate the District beyond one year.

1. Terms of the Lease Agreement

As described in Section II.B herein, the Lease Agreement contains a “renewal by appropriation” or “non-appropriation clause” provision, which provides that the Lease Agreement is subject to annual appropriation and affirmative renewal. *Petition*, Exhibit B, Lease Agreement § 5.1(b). Specifically, Section 5.3 of the Lease Agreement provides that “[t]he obligation of the District to pay Lease Payments, Prepayments, Debt Service Reserve Payments, Rebate Fund Payments and Occupancy Expenses (collectively, “Rent”) begins on the Commencement Date and extends only through the Initial Term and any Renewal Term, if the Lease is so renewed at the sole option of the District pursuant to Section 5.1.” *Id.* at § 5.3. A “Renewal Term” is defined in the Lease Agreement as beginning on December 1 and terminating the following November 30, thus never extending beyond a year. *Id.* at Appendix A - “Renewal Term.” Accordingly, in an Event of Nonrenewal the Lease Agreement shall terminate on November 30 of the then current year and the District shall have no further indebtedness or

liability thereunder. *Rice Affidavit*, ¶ 18; *Brunelle Affidavit*, ¶ 14; see also *Petition*, Exhibit B, Lease Agreement §§ 3.3, 5.1(c), 5.3, 8.12.

2. Idaho Case Law

a. Idaho Supreme Court Decisions

Article VIII, § 3 of the Idaho Constitution limits the ability of certain public entities to incur long-term indebtedness without voter approval. It provides, in pertinent part:

No county, city, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, **exceeding in that year, the income and revenue provided for it for such year**, without the assent of two-thirds (2/3) of the qualified electors thereof voting at an election to be held for that purpose

Idaho Constitution Art. VIII, § 3 (emphasis added). By its plain terms Article VIII, § 3 does not prohibit obligations that do not exceed the revenue and income for the current year. Because the District has structured the Lease Agreement to terminate at the end of each fiscal year, unless affirmatively budgeted for and renewed, the Lease Agreement is not a debt or liability prohibited by Article VIII, § 3 of the Idaho Constitution.

Article VIII, § 3 also contains an exception permitting long-term obligations for “ordinary and necessary expenses,” which exception has been the subject of a number of Supreme Court rulings over many years, most recently the *City of Boise v. Frazier*, 143 Idaho 1 (2006), and *City of Idaho Falls v. Jared Fuhrman*, 149 Idaho 574 (2010).⁴ While this “ordinary

⁴ The issues presented in this case are distinct from those presented in *Frazier* and *Fuhrman*. In *Frazier*, the Court invalidated a proposed financing of an expansion to the Boise Airport parking garage on the basis that the expansion was not ordinary and necessary. In *Fuhrman*, the Supreme Court invalidated a long-term contract, which was not subject to annual appropriation, between the City of Idaho Falls and a third party to purchase power on the basis that the contract was not ordinary and necessary. *Frazier* and *Fuhrman* adjudicated the boundaries of the ordinary and necessary exception but did not address the exception for obligations not exceeding income and revenue for the year and did not involve obligations subject to annual appropriation.

and necessary” exception has been construed tightly by Idaho courts, it is not implicated in the instant action. The District does not, and has never, asserted that the Financed Project is “ordinary or necessary.” Rather, the District has sought judicial determination on a very narrow issue; i.e., does the District have the power and authority to enter into the Lease Agreement with the Agency? **Specifically, the District seeks judicial confirmation that the Lease Agreement does not constitute an indebtedness or liability that extends beyond one year in violation of Article VIII, § 3.**

The Idaho Supreme Court has not addressed whether an annual appropriation lease is a debt or liability under Article VIII, § 3. However, a majority of appellate courts in other states have held that leases subject to annual appropriation are not a prohibited indebtedness or liability under similar state constitutional provisions. Additionally, the Supreme Court has issued several other opinions supporting the District’s contention that the Lease Agreement is not an indebtedness or liability prohibited under Article VIII, § 3 because the District has not incurred and will not incur any obligation beyond its current fiscal year.

The Idaho Supreme Court held, in *Idaho Water Resources Board v. Kramer*, that a “debt” refers to an obligation incurred by the political subdivision which creates a *legal duty* on its part to pay from the general fund a sum of money to another, who occupies the position of creditor, and who has a lawful right to demand payment. *Idaho Water Resources Bd. v. Kramer*, 97 Idaho 535, 556, 548 P.2d 35, 56 (1976). “It contemplates an obligation which is irrevocable and requires for its satisfaction levies beyond the appropriations made available by the Legislation to meet the ordinary and necessary expenses of state government for the fiscal year.” *Id.* The term “liability” has been given a somewhat broader scope – it refers to an obligation one is bound in law or justice to perform. *Kramer*, 97 Idaho at 556, 548 P.2d at 56. “Liability” has been distinguished from a debt as follows:

If A by a valid contract employs B to work for him for the term of one year at \$50 per month, payable at the end of each and every month, would this contract not be a liability on A as soon as executed? A debt of \$50 would accrue thereon at the end of each month, but the liability would be incurred at the time the contract was entered into.

Boise Dev. Co. v. City of Boise, 26 Idaho 347, 363, 143 P. 531, 535 (1914). Thus, the Idaho Supreme Court has made clear that a liability is created when there is an enforceable duty to make the payment.

Although the Idaho Supreme Court has not yet been confronted with a lease containing a non-appropriation clause, the Court has held that where a proposed plan does *not* bind future governments, or obligates only *current appropriations*, no prohibited “debt or liability” is created. *Lyons v. Bottolfsen*, 61 Idaho 281, 287, 101 P.2d 1, 6-7 (1940). *See also Foster’s, Inc. v. Boise City*, 63 Idaho 201, 204, 118 P.2d 721, 724 (1941) (where no debt or liability was created except a provision for payment during the fiscal year for which it was incurred, the transaction did not violate the constitution). Thus, only an obligation that purports to bind the obligor beyond the current fiscal year’s revenues will be considered a debt or liability incurred in violation of Article VIII, § 3.

The Lease Agreement has been structured to comply with Article VIII, § 3. The District is only obligated for the Initial Term of the Lease Agreement, with existing funds having been appropriated and budgeted for that purpose. Moreover, as described in Section II.B above, the District has set aside, pledged and committed \$250,000 to be held in a “Lease Contingency Fund” as the sole source of payment for all claims of the Agency under the Lease Agreement, including such claims as may survive the District’s termination of the Lease Agreement. As this Lease Contingency Fund has been prefunded by the District and the Agency has no recourse against the District except to such Fund, the District has no open-ended obligations under the Lease Agreement which subject the District to liability beyond one year. Simply, the District

is free to walk away at the end of the Initial Term, or any Renewal Term, which coincides with the end of its fiscal year, without any penalty. Because the Lease Agreement does not bind the District beyond its current fiscal year's revenues, and neither the Agency, as lessor of the Financed Project under the Lease Agreement, nor Wells Fargo, as Note holder, have a legally enforceable right to compel the District to make payments beyond the District's current fiscal year, the Lease Agreement is not a debt or liability in violation of Article VIII, § 3.

Lastly, it is worth noting that the Agency is not an entity subject to the provisions of Article VIII, § 3 of the Idaho Constitution, and **the ability of the Agency to enter into debt without seeking voter approval is not an issue before this Court.**⁵ In 1972, the Idaho Supreme Court definitively weighed in on this issue and concluded, in part, that since an urban renewal agency has no powers of taxation, the provisions of Article VIII, § 3, do not apply. *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 883, 499 P.2d 575, 582 (1972). The *Yick Kong* decision was recently reaffirmed in *Urban Renewal Agency of City of Rexburg v. Hart*, 148 Idaho 299, 222 P.3d 467 (2009).

b. Appellate Courts of Other States

An overwhelming majority of the courts in other states have held that non-appropriation leases do not violate similar state constitutional restrictions on indebtedness. In *Municipal Building Authority Iron County v. Lowder*, the Utah Supreme Court considered an annual appropriation lease to be entered into between Iron County and the Municipal Building Authority (the "Authority") for the purpose of financing a new jail facility for the county. 711 P.2d 273

⁵ In his *Answer*, Respondent challenges the ability of the Agency to undertake certain actions under Central District Urban Renewal Plan after December 31, 2017. Respondent's contentions in this regard are not material to the issues in this action nor are they currently before the Court. Rather, the sole issue before the Court is whether the Lease Agreement constitutes an indebtedness or liability that extends beyond one year in violation of Article VIII, § 3.

(Utah 1985). The proposed financing utilized a similar structure to the present matter. The Authority would issue revenue bonds to finance the construction of a jail facility. *Lowder*, 711 P.2d at 276. As part of the same transaction, the county would then lease the newly constructed jail facility from the Authority on a year-to-year basis for up to twenty years. *Id.* After the twenty years pass and the bonds are fully repaid, the Authority would transfer title to the jail to the county. *Id.*

The Court upheld the lease, finding that the lease did not violate Utah's constitution, noting specifically that "a contractual obligation that can be discharged within one year is not considered a debt that must be submitted to the voters."⁶ *Id.* at 278. In so holding, the Court specifically addressed Lowder's contention that the financing plan evaded the constitution's debt limitation and that, regardless of the express terms, in substance the lease should be found to be an invalid long-term debt. Rejecting this contention, the Court wrote:

In the present case, the county has the right to terminate the contract at the end of any year. The amount due in any one year is only for services provided during that year. Therefore, the proposed lease qualifies for treatment on a year-to-year basis under *Barnes v. Lehi City* and related cases. Of course, as a practical matter the county will renew the lease for the next twenty years. But that does not affect the analysis so long as the county cannot be held legally responsible for other than the services it receives during the current tax year.

Id. at 279. Thus, the relevant consideration was the express term of the lease agreement and the legally binding obligations therein. *See also St. Charles City Co. Library Dist. v. St. Charles Library Build. Corp.*, 627 S.W.2d 64, 68 (Mo. App. 1981) ("[B]ecause the lease may be terminated by the failure of the District to renew it at the end of any year, we hold that it does not

⁶ Utah's constitutional prohibition is similar to Article VIII, § 3. It provides, in pertinent part, "No debt in excess of the taxes for the current year shall be created . . . unless the proposition to create such debt, shall have been submitted to a vote of such qualified electors as shall have paid a property tax therein." Utah Const. Art. XIV, § 3.

violate the debt limitation provisions of Article VI, Section 26 of the constitution.”); *Halstead v. McHendry*, 566 P.2d 134, 137-38 (Ok. 1977) (annual appropriation lease did not violate debt limitation provisions in constitution because the lease did not obligate future county commissioners to continue the lease, and there was therefore no legally enforceable obligation on the county to continue the lease agreement).

Similarly, the California Supreme Court has long held that the debt limitation in Article XVI, Section 18 of the California Constitution does not apply when a local government enters into a contingent obligation.⁷ *Rider v. City of San Diego*, 959 P.2d 347, 353 (Cal. 1998). “A sum payable upon a contingency is not a debt, nor does it become a debt until the contingency happens.” *Id.* at 354. The California Supreme Court has “repeatedly applied this principle to uphold multiyear contracts in which the local government agrees to pay in each successive year for land, goods, or services provided during that year.” *Id.*

The classic example of this type of contract is a lease agreement. In such cases, we have reasoned that a debt for the aggregate of all rent payments does not arise at the time the parties execute the lease so long as liability for each individual rent payment is contingent on continued use of the leased property during the period corresponding to that rent payment.

Id. In *Rider*, the Court considered an annual appropriation lease financing plan for expansion of the San Diego Convention Center. *Id.* at 349. Similar to the financing plan for the Financed Project, in *Rider*, the City of San Diego entered into an annually renewable lease with another public agency--in that case a Convention Center Expansion Financing Authority--which issued

⁷ As noted by Judge Moody in *In the Matter of Greater Boise Auditorium District*, Case No. CVOT1411320D (4th Dist. August 28, 2014), California’s constitutional language is very similar to Idaho’s. Specifically, Article XVI, Section 18 of California’s Constitution provides, in pertinent part: “No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters of the public entity voting at an election to be held for that purpose . . .”.

bonds to finance the project and then leased it to the City of San Diego. *Id.* Rent under the lease was set at an amount equal to the debt service on the bonds, including principal and interest, plus additional rent to cover administrative expenses. *Id.*

Expounding on its previous holdings in *Dean v. Kuchel*, 218 P.2d 521 (Cal. 1950) and *City of Los Angeles v. Offner*, 122 P.2d 14 (Cal. 1942), the California Supreme Court upheld the constitutionality of the parties' agreement, reasoning:

The determinative inquiry for purposes of the Constitution is not the extent to which the agreement resembles an installment purchase contract, but whether the payments in future years are contingent. Even if the parties in *Dean* had expressly labeled their agreement an "installment purchase contract," the agreement would have satisfied the Constitution so long as liability for each installment of the purchase price was contingent on receipt of some additional, contemporaneous consideration, such as the buyer's ongoing 'use and occupancy of the . . . building' before transfer of title.

Id. at 355 (emphasis added). Finding that the city would incur no obligation to make a rent payment until it received the consideration corresponding to that payment, i.e., the use and possession of the property; the Court held that the city's obligation to pay rent to the Financing Authority did not constitute a debt requiring voter approval under the California Constitution.⁸ *Id.* See also Appendix A hereto for a list of cases with similar holdings from other states. These cases are consistent with Idaho Supreme Court precedent that defines debt and liability to mean only those obligations extending beyond one fiscal year that create a duty one is bound by law to perform and that the other party has a lawful right to demand. See *Kramer*, 97 Idaho at 556.

⁸ The California Supreme Court recognizes that California Constitution Article XVI, "section 18 is more accurately understood as mandating balanced budgets than merely as regulating the debt financing of public capital improvements." *Rider*, 959 P.2d at 353.

c. Idaho District Court Decisions

Several Idaho district courts have also rendered well-reasoned opinions that non-appropriation leases do not violate Article VIII, § 3. In *Spencer v. North Idaho College*, the First District held that “so long as [the lease] contains specific language making [lessee’s] renewal subject to availability of appropriated funds and makes the lease term renewable on a yearly basis, the lease complies with the Idaho Constitution.” See *Spencer*, Case No. CV 2009 8934, *9 (1st Dist. March 19, 2010), a copy of which is attached hereto as **Exhibit A** for convenience of the Court. In reaching its decision, the *Spencer Court* noted that its ruling was “certainly bolstered by the concurring opinion of Justice Jim Jones in *In Re University Place/Idaho Water Center Project*,” wherein Justice Jones wrote:

The fact of the matter is that all state contracts contain those same provisions because Article VIII § 1 of the Idaho Constitution prohibits the State from incurring multi-year indebtedness without submitting the matter to the public for a vote. Article VIII § 3 imposes a similar limitation on public indebtedness with respect to subdivisions of state government. It is virtually impossible to present every multi-year governmental contract or lease to the public for a vote. Thus, leases and other contracts that are intended to extend beyond one year always contain provisions (1) making the government’s performance subject to the availability of appropriated funds and (2) making the agreement renewable on an annual basis for the contemplated term.

146 Idaho 527, 547 (2008) (J. Jones, Concurring). Justice Jones, in his opinion, sets forth the two vital components that a lease must contain in order for it to be valid under Article VIII, § 3: each year the lease must be subject to appropriation and annual renewal. Like the lease at issue in *Spencer*, the Lease Agreement in the present matter contains both of these prerequisites.

There are a number of other district court opinions upholding lease agreements on similar facts. Specifically on point is a recent decision in the Sixth Judicial District where the District Court found that an annual appropriation lease between The Pocatello-Chubbuck Auditorium District and the Chubbuck Development Authority, the City of Chubbuck’s urban renewal

agency, proposed for the financing of an approximately 40,000 square-foot community events center, was not a debt or liability under Article VIII, § 3 of the Idaho Constitution. *See In re The Pocatello-Chubbuck Auditorium District*, Case No. CV 2013-4838-00 (6th Dist. March 13, 2014), a copy of which is attached hereto as **Exhibit B**. In *Pocatello-Chubbuck*, the lease agreement, like the Lease Agreement, is renewable for subsequent one-year terms only upon appropriation, budgeting and affirmative notice by the auditorium district of its intent to renew. *Id.* at 4.

In August of 2002, the Blaine County School District petitioned the Fifth District, seeking judicial confirmation of the validity of the District's plan to enter into a site lease, lease/purchase agreement, a trust agreement, and related documents to effectuate the lease/purchase financing of school facilities. *See In re School District No. 61, Blaine County, Idaho*, Case No. SP-022782 (5th Dist. August 5, 2002), a copy of which is attached hereto as **Exhibit C** for convenience of the Court. The proposed lease/purchase agreement was an annual appropriation lease, and the District had funding for the first year's rental payments currently budgeted and available. *Id.* at *9. The court found that the lease/purchase agreement and other financing documents did not constitute an "indebtedness or liability" within the meaning of Article VIII, § 3. *Id.* at *12. The court approved a similar structure for financing of school improvements in 2010. *See In re School District No. 61, Blaine County, Idaho*, Case No. CV2010-170, Findings of Fact and Conclusions of Law (5th Dist. May 5, 2010), a copy of which is attached hereto as **Exhibit D**. The financing structure proposed by the District in the present matter is substantially similar to the financing structures approved by the Fifth District in 2002 and 2010.

For the Fourth District, Judge Woodland upheld a non-appropriation lease to finance the Ada County courthouse, finding a lease subject to annual appropriation does not violate Article

VIII, § 3. *See Ada Co. Property Owners Assn., Inc. v. County of Ada*, Case No. CV-OC-9804773D (4th Dist. August 25, 1999), a copy of which is attached hereto as **Exhibit E** (“The Court finds nothing in any of the executed agreements provided by Petitioners which obligate Ada County for more than one year.”). In *Ada County Property Owners Association* the urban renewal agency for the City of Boise leased land from Ada County under a ground lease and then leased the land and the constructed courthouse back to Ada County under a lease with a non-appropriation clause. *See also In re Ada County*, Case No. 95055, *13-14 (4th Dist. January 23, 1992), a copy of which is attached hereto as **Exhibit F** (Petitioner incurred no indebtedness or liability under Article VIII, § 3 with a non-appropriation lease – “The only means by which the Petitioner could become liable for any payments beyond the moneys provided to it for the current fiscal year would be by exercising its option to renew for an additional term (or by electing to prepay as provided in the lease agreement), after first duly budgeting and appropriating the amounts of such lease payments for the ensuing fiscal year.”)

In contrast, two Fourth District decisions have not approved non-appropriation lease transactions. The first is Judge Copsey’s decision in *In the Matter of City of Boise*, Case No. CVOC0202395D (4th Dist. August 26, 2002), a copy of which is attached hereto as **Exhibit G**. The facts in *City of Boise* are readily distinguishable from this matter. The City of Boise planned to transfer real property it owned to a bank to enable the bank to build the project and then lease the property back to the City under an annual appropriation lease. *See In the Matter of City of Boise*, Case No. CVOC0202395D, *3. The bank would then sell certificates of participation to finance the costs of construction and hold title to both the improvements and the land on behalf of the certificate holders. *Id.* The fatal flaw in that structure was that the remedies upon nonrenewal were the same as upon default. *Id.* at *4. In either event, the certificate owners could order the sale of the property, including the land previously owned by the City. *Id.* In an event of

nonrenewal the City would forfeit its property and receive nothing in return. *Id.* at *24-25. Thus, there was economic compulsion to renew the lease. *See Id.* at *4-5.

Although the District contends, based on *Lyons* and *Kramer*, that this fact is not fatal to the validity of an annual appropriation lease transaction, the District has avoided this potential defect by designing a legal structure that provides for the District, even in an Event of Nonrenewal, to retain the right to purchase the Financed Project for a nominal sum once the Note has been paid in full. In this manner, the District preserves the benefits of any Rent it has paid prior to the Event of Nonrenewal, and does not forfeit its interest in the Financed Project if it elects not to renew the Lease Agreement or if it defaults during the currently applicable term. There is no penalty to the District if it walks away at the end of any Renewal Term and the District does not have any real property at risk.

In addition, there is no economic compulsion here for the District to renew the Lease Agreement in any given year. The rent that the District will be paying is below fair market value for comparable space, *Wali Affidavit*, ¶ 5, and thus the District is getting full value from each year's Rent payment. Moreover, the District intends to maintain its current ballroom and kitchen facilities at the Boise Centre. *Rice Affidavit*, ¶ 25. Thus, even in the event it chooses not to renew the Lease Agreement, the District will be able to continue to operate its convention center facilities as they are currently being operated at the Boise Centre. *Id.* Unlike in the *City of Boise*, there is no disguised "scheme" obligating the District to renew the Lease.

The other Fourth District decision denying a non-appropriation lease transaction is Judge Moody's decision in *In the Matter of Greater Boise Auditorium District*, Case No. CVOT1411320D (4th Dist. August 28, 2014) ("*Greater Boise Auditorium District I*"), a copy of which is attached as Exhibit A to Respondent's *Answer* filed herein. *Greater Boise Auditorium District I* involved the same underlying Financed Project as the *Petition* in the instant matter; i.e.,

the acquisition of certain condominium units containing a new ballroom facility, related kitchen and ancillary facilities to improve and expand the Boise Centre. However, the lease agreement and financing structure before the Court in *Greater Boise Auditorium District I* were materially different from those now before the Court. Of particular note, in denying judicial confirmation in *Greater Boise Auditorium District I*, the Court did not reject the annual appropriation nature of the lease agreement:

Recognizing that the government, including subdivisions, needs to be able to enter into long term contracts to function, it is important to note that it is not the twenty-four year nature of the proposed lease that presents a constitutional problem. **Neither the long-term lease nor the appropriation contingency cause this Court concern.**

Case No. CVOT1411320D *14 (emphasis added). Rather, the Court was concerned with the intricate details of the various financing documents; ultimately concluding that the District was possibly subject to open-ended liabilities extending beyond one year and, alternatively, that there were too many unknowns for the Court to approve the lease agreement. *Id.* at *14-15. Although the District takes issue with the Court's analysis and decision in *Greater Boise Auditorium District I*, it contends that the Lease Agreement now before the Court, viewed together with the Term Sheet, allays the various concerns therein and, in any event, does not constitute a prohibited debt or liability under Article VIII, § 3.

Idaho Constitution, Article VIII, § 3 precludes municipalities from incurring debt or liabilities exceeding the income or revenue provided for that year. In light of the foregoing case law, the Lease Agreement is not an unconstitutional indebtedness or liability in violation of Article VIII, § 3. The Lease Agreement contains a non-appropriation clause, and is renewed only with budgeting and affirmative notice by the District of its intent to renew. The only obligation incurred is for the annual rental payments coming due in the Initial Term or applicable Renewal Term, once the Lease Agreement has been renewed and funds have been budgeted for

that purpose. There is no collateral pledged upon an Event of Nonrenewal and the Lease does not bind the District beyond its current fiscal year's revenues. The District has no legal obligation or liability to make any further payments or to pay any further funds for any subsequent fiscal year under the Lease Agreement unless further funds are appropriated for the subsequent fiscal year and the Lease Agreement is affirmatively renewed by the District for such fiscal year. Future District Boards will evaluate whether to renew the Lease Agreement each year and have sole discretion in doing so. The Lease does not bind future governments and future generations are not subject to any obligation to continue funding the Lease Agreement. Wells Fargo, as Note holder, is at risk if the District declines to appropriate funds and walks away from the Lease Agreement, not the District, the Agency, or the District taxpayers. The District suffers no penalty if it elects not to appropriate funding to renew the Lease Agreement. Nor is the District under any economic compulsion to do so. Accordingly, the Lease Agreement does not constitute a prohibited debt or liability under Article VIII, § 3.

VII.

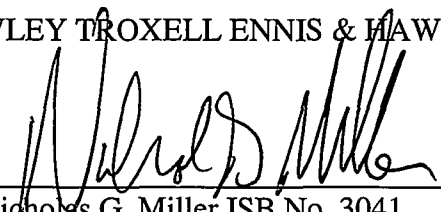
CONCLUSION

Based on the foregoing, Petitioner requests an order confirming Petitioner's power and authority to enter into the Lease Agreement based on the finding that such Lease Agreement is not a debt or obligation under Article VIII, §3 of the Idaho Constitution.

RESPECTFULLY SUBMITTED THIS 26th day of January, 2015.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By



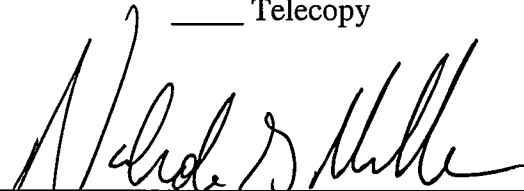
Nicholas G. Miller ISB No. 3041
Attorneys for Petitioner
Greater Boise Auditorium District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of January, 2015, I caused to be served a true copy of the foregoing MEMORANDUM IN SUPPORT OF PETITION FOR JUDICIAL CONFIRMATION by the method indicated below, and addressed to each of the following:

John L. Runft, Esq.
Runft & Steele Law Offices, PLLC
1020 W. Main St., Ste. 400
Boise, ID 83702

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ E-mail
☐ Telecopy



Nicholas G. Miller

APPENDIX A

For additional rulings holding that non-appropriation leases do not violate constitutional restrictions on indebtedness, see *Carr Gottstein Prop. v. State of Alaska*, 899 P.2d 136, 142-43 (Alaska 1995); *Caddel v. Lexington Co. Sch. Dist. No. 1*, 373 S.E.2d 598, 599 (S.C. 1988); Opinion of the Justices, 335 So.2d 376, 379-80 (Ala. 1976); *Dean v. Kuchel*, 35 Cal.2d 444, 218 P.2d 521, 523-24 (1950); *Rider v. City of San Diego*, 18 Cal. 4th 1035, 1047-49, 959 P.2d 347, 353-55 (1998); *Glennon Heights, Inc. v. Central Bank & Trust*, 658 P.2d 872, 878-79 (Colo. 1983); *Wilmington Med. Ctr. Inc. v. Bradford*, 382 A.2d 1338, 1346-48 (Del. 1978); *State v. School Bd. of Sarasota County*, 561 So.2d 549, 552-53 (Fla. 1990); *Sheffield v. State Sch. Bldg. Auth.*, 208 Ga. 575, 68 S.E.2d 590, 594-95 (Ga. 1952); *In re Anzai*, 85 Hawai'i 1, 936 P.2d 637, 640-43 (Ha. 1997); *Berger v. Howlett*, 25 Ill.2d 128, 182 N.E.2d 673, 674-75 (Ill. 1962); *Book v. State Office Bldg. Comm'n*, 238 Ind. 120, 149 N.E.2d 273, 286-89 (Ind. 1958); *State ex rel. Fatzer v. Armory Bd.*, 174 Kan. 369, 256 P.2d 143, 146-51 (Kan. 1953); *Wilson v. Ky. Trans. Cabinet*, 884 S.W.2d 641, 645-46 (Ky. 1994); *Edgerly v. Honeywell Info. Sys.*, 377 A.2d 104, 108 (Me. 1977); *In re Request for Advisory Opinion Enrolled Senate Bill 558*, 400 Mich. 175, 254 N.W.2d 544, 546-547 (Mich. 1977); *Ruge v. State*, 201 Neb. 391, 267 N.W.2d 748, 750-52 (Neb. 1978); *Employers Ins. Co. of Nev. v. State Bd. of Examiners*, 117 Nev. 249, 21 P.3d 628, 631-33 (Nev. 2001); *Schulz v. State*, 84 N.Y.2d 231, 616 N.Y.S.2d 343, 639 N.E.2d 1140, 1148-50 (N.Y. 1994), *cert. denied*, 513 U.S. 1127, 115 S.Ct. 936, 130 L.Ed.2d 881 (1995); *Martin v. N.C. Housing Corp.*, 277 N.C. 29, 175 S.E.2d 665, 678-79 (N.C. 1970); *Haugland v. City of Bismarck*, 429 N.W.2d 449, 454-56 (N.D.1988); *In re Okla. Capitol Improvement Auth.*, 958 P.2d 759, 767- 775 (Okla.), *cert. denied*, *Fent v. Okla. Capitol Improvement Auth.*, 525 U.S. 874, 119 S.Ct. 174, 142 L.Ed.2d 142 (1998); *State ex. rel. Kane v. Goldschmidt*, 308 Or. 573, 783

P.2d 988, 993-96 (Or. 1990); *Kelley v. Earle*, 325 Pa. 337, 190 A. 140, 144-47 (Pa. 1937); *Opinion to the Governor*, 112 R.I. 139, 308 A.2d 802, 807 (R.I. 1973); *McFarland v. Barron*, 83 S.D. 639, 164 N.W.2d 607, 609-11 (S.D. 1969); *Ragsdale v. City of Memphis*, 70 S.W.3d 56, 63-70 (Tenn.Ct.App. 2001); *Tex. Pub. Bldg. Auth. v. Mattox*, 686 S.W.2d 924, 928 (Tex. 1985); *Mun. Bldg. Auth. of Iron County v. Lowder*, 711 P.2d 273, 277-81 (Utah 1985); *Dykes v. Northern Va. Transp. Dist. Comm'n*, 242 Va. 357, 411 S.E.2d 1, 8-10 (on rehearing), *cert. denied*, *Tower v. Northern Va. Transp. Dist. Comm'n*, 504 U.S. 941, 112 S.Ct. 2275, 119 L.Ed.2d 201 (1992); *Dep't of Ecology v. State Fin.Comm.*, 116 Wash.2d 246, 804 P.2d 1241, 1245-46 (Wash. 1991); *Dieck v. Unified Sch. Dist. of Antigo*, 165 Wis.2d 458, 477 N.W.2d 613, 617-21 (Wisc. 1991).

EXHIBIT A

STATE OF IDAHO)
County of KOOTENAI)

FILED 3-19-10

AT 3:30 o'clock P M
CLERK OF DISTRICT COURT

Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

LAWRENCE SPENCER, THOMAS R.
MACY, and WILLIAM McCRORY,,

Plaintiffs,

vs.

NORTH IDAHO COLLEGE, and NORTH
IDAHO COLLEGE FOUNDATION, an Idaho
non-profit corporation,.

Defendants.

Case No. **CV 2009 8934**

**MEMORANDUM DECISION AND
ORDER GRANTING DEFENDANT
NORTH IDAHO COLLEGE'S
MOTION FOR SUMMARY
JUDGMENT**

I. PRODEDURAL HISTORY AND BACKGROUND.

This matter is before the Court on defendants' motion for summary judgment. Defendant North Idaho College (NIC) is a community college district organized pursuant to I.C. § 33-2101, *et seq.* Defendant North Idaho College Foundation (Foundation) is an Idaho non-profit corporation incorporated pursuant to I.C. § 30-3-1, *et seq.* Plaintiffs are three individuals who own property in Kootenai County, and thus, electors and taxpayers within the district boundaries of that community college. Complaint, p. 2, ¶¶ 3-5, 8.

On July 23, 2009, the Foundation purchased property in Kootenai County known as the "Mill Site." At an open public meeting on July 21, 2009, NIC, acting through its Board of Trustees (Board), authorized NIC to enter into a lease agreement with the Foundation for the Mill Site. Resolution 2009-01 was approved by the Board on that date; it was determined the lease was "in the best interests of the students, residents

and taxpayers of Kootenai County..." Complaint, Exhibit 3, Resolution No. 2009-01, p. 1. On July 23, 2009, NIC executed the lease agreement which provided for NIC to lease the Mill Site from the Foundation on a yearly basis; renewal of the lease would require affirmative action by the Board each year through. Complaint, Exhibit 3, Lease Agreement, p. 2.

On October 27, 2009, plaintiffs filed their *pro se* Complaint, alleging a violation of Article VIII, Section 3 of the Idaho Constitution. Plaintiffs claim the lease agreement is a *de facto* installment land sale contract for which NIC did not obtain the required 2/3 assent of the qualified elector's in the district. Complaint, p. 5, ¶¶ 32-33. Plaintiffs also claim NIC did not obtain judicial validation of the lease agreement pursuant to I.C. § 7-1304, as an alternative to the assent of 2/3 of qualified electors in the district. *Id.*, ¶ 34. Plaintiffs seek: declaratory judgment that the lease agreement violates Article VIII, Section 3 of the Idaho Constitution; permanent injunctive relief prohibiting NIC from making further expenditures under the lease agreement until the lease is approved by 2/3 of qualified electors in the district, should that occur; and an entry of judgment compelling the Foundation to return all monies received from NIC under the lease. Complaint, pp. 6-7. On November 25, 2009, NIC and the Foundation filed their separate Answers to the Complaint.

On January 22, 2010, NIC filed its motion for summary judgment, "Memorandum in Support of Motion for Summary Judgment on Behalf of North Idaho College", and the "Affidavit of Tom Komberec (Vice-President of NIC Foundation) in Support of Motion for Summary Judgment". Also on January 22, 2010, the Foundation filed "North Idaho College Foundation's Joinder in North Idaho College's Motion for Summary Judgment." In its motion for summary judgment NIC requests this Court grant summary judgment in NIC's favor as to the validity of the lease. "If the Lease Agreement does not violate

Article VIII, Section 3, all other claims or remedies sought by the Plaintiffs are moot and this lawsuit must be dismissed." Defendants' Memorandum in Support of Motion for Summary Judgment, p. 13. On February 8, 2010, the plaintiffs filed "Plaintiffs Answering Brief in Response to defendant's Motion for Summary Judgment", an "Affidavit of Lawrence Spencer Supplementing Plaintiffs' Answering Brief in Response to Defendants' Motion for Summary Judgment" and the "Affidavit of William McCrory Supplementing Plaintiffs' Answering Brief in Response to Defendants' Motion for Summary Judgment". On February 16, 2010, the Foundation filed the "Foundation Reply Brief in Support of Motion for Summary Judgment." Also on February 16, 2010, NIC filed its "Reply Memorandum in Support of Motion for Summary Judgment." On February 22, 2010, the "Affidavit of William McCrory in Opposition to Motion for Summary Judgment" was filed. Oral argument was held on February 22, 2010. At the conclusion of oral argument, this Court took the motion for summary judgment under advisement.

II. STANDARD OF REVIEW.

A motion for summary judgment shall be rendered if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. I.R.C.P. 56(c); *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991). Standards applicable to summary judgment require the district court to liberally construe facts in the existing record in favor of the party opposing the motion, and to draw all reasonable inferences in favor of the non-moving party. *Loomis*, 119 Idaho at 436. If the record contains conflicting inferences or if reasonable minds might reach different conclusions, summary judgment must be denied. *Id.* The moving party is entitled to judgment when the nonmoving party fails to establish the existence of an

element essential to that party's case on which that party will bear the burden of proof at trial. *Badell v. Beeks*, 115 Idaho 101, 102, 765 P.2d 126 (1988).

III. ANALYSIS.

NIC argues Article VIII, Section 3 of the Idaho Constitution only prohibits NIC from incurring debt or liability exceeding the income or revenue provided in the current year for that debt or liability. Defendants' Memorandum in Support of Motion for Summary Judgment, pp. 8-9. NIC states the lease agreement does not contemplate future aggregate rents and "the only obligation being incurred by NIC was the current yearly rent under the lease." *Id.*, at p. 9. Therefore, NIC argues, there is no requirement for the assent of two-thirds of the qualified electors; nor does any obligation to seek judicial confirmation exist as this is merely an available discretionary statutory process. *Id.*, pp. 8-9. NIC argues the lease agreement does not violate the Idaho Constitution for several reasons: rents are only due and owing for years beyond the 2009-2010 fiscal year if the lease term is extended, and nothing in the lease agreement obligates NIC to renew for any of the four consecutive one-year terms available under the lease; the lease itself does not create any debt or liability as those terms are defined by Idaho case law; NIC has not pledged or encumbered any of its own property beyond the 2009-2010 term; and the lease agreement is a typical ground lease, therefore NIC's agreement to pay assessments, provide insurance, etc. are common and limited to the current year and no liability for taxes or insurance would be incurred if the lease agreement is not renewed. Defendants' Memorandum in Support of Motion for Summary Judgment, pp. 9-12.

In response, the *pro se* plaintiffs disagree with the assertion that the lease agreement does not create or involve a debt or liability extending beyond one year. Answering Brief in Response to Defendants' Motion for Summary Judgment, p. 2.

Specifically, plaintiffs point to public documents (including the lease agreement itself), and claim such evince the Board's intent to acquire title to the Mill Site, and not merely lease the property on an annual basis. *Id.*, pp. 3-6. Plaintiffs write:

Plaintiffs contend that while the Lease Agreement takes the form of a lease, it is in fact a disguised installment purchase agreement that contravenes the Idaho Constitution, Article 8, Section 3.

Id., p. 5. Plaintiffs continue:

The Lease Agreement, ¶ 3, obligates Defendant College to pay Defendant Foundation \$4,000,000 in "prepaid rent" upon execution of the Agreement. As explained earlier, it appears that \$500,000 of that is "good faith deposit." The Lease Agreement does not explain for what period of time the remaining \$3,500,000 of "prepaid rent" pays the rent. Thereafter, Defendant is obligated to make six semi-annual payments of exactly \$1,074, 134.02 for three years, contingent on appropriating the annual amount due by the Defendant College in its annual budget. The total of those six semi-annual payments is \$6,444,804.12. Adding the \$4,000,000 in "prepaid rent" to the sum of the six equal semi-annual payments results in a total amount of \$10,444,804.12 to be paid by Defendant College to Foundation.

Id., pp. 6-7. Plaintiffs note \$444,804.12 in payments "must be interest or fees", but they are unable to further explain the amount pending receipt of discovery responses. *Id.*, p.

7. Additionally, plaintiffs point to the Tax Agreement Regarding Revenue Ruling (attached to plaintiffs' Complaint) conferring tax exempt status, for support of their argument that:

...Defendants had to know and agree when the Lease Agreement was signed that it is, in fact, a sales contract and not a lease-option agreement. It is this Tax Agreement Regarding Revenue Ruling that binds Defendants together was a single unit in this action.

Id., p. 8. Finally, plaintiffs argue NIC's exercise of the non-appropriation option in the lease agreement may result in actual or possible losses including the good faith deposit and any buildings or improvements placed on the Mill Site by NIC, *inter alia*. *Id.*, p. 10.

The Foundation, in its reply brief, argues no long-term obligation was necessary

in this transaction, nor was any long-term obligation the intent of defendants.

Foundation Reply Brief in Support of Summary Judgment, p. 2. The Foundation notes the requirements of the Tax Code "obscure some of the language typically used in this type of transaction but do not change the nature of the transaction." *Id.* That is: the Foundation incurred a debt to purchase property, it leased the property to NIC on a year-to-year basis, the debt is secured by the property- not by the lease, only the Foundation is obligated to pay the debt, the Foundation intends to use the lease proceeds to make payments on the debt but is not required to do so, NIC did not enter into a long-term lease, and NIC did not incur the debt. *Id.* The Foundation discusses cases cited by plaintiffs as being inapposite and notes the Tax Agreement Revenue Ruling does not require the lease to be a long-term obligation. *Id.*, pp. 4-5. NIC, in its reply brief, argues the only issue before the Court is whether NIC incurred a debt or obligation violative of Article VIII, Section 3, of the Idaho Constitution; whether or not NIC's ultimate intent is to own the Mill Site is of no import. Reply Memorandum in Support of Motion for Summary Judgment, p. 2. NIC then discusses in detail the Wisconsin case *Dieck v. Unifies School District of Antigo*, 165 Wis.2d 458, 477 N.W.2d 613 (Wisc. 1991), and argues the non-appropriation provision of the Lease Agreement protects NIC's future incomes and revenues. *Id.*, p. 5.

If the College decides that a successive year's revenue is insufficient to make such [rent] payments, then the College may elect not to budget rent payments and not renew the Lease for an additional one-year period. There are no penalties associated with failing to renew. Paragraph 2.1 of the Lease Agreement prohibits the College from pledging future years' income to make rent payments.

Id. At issue here is Article VIII, Section 3 of the Idaho Constitution, which states:

SECTION 3. LIMITATIONS ON COUNTY AND MUNICIPAL INDEBTEDNESS. No county, city, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability,

in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provisions shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within thirty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void: Provided, that this section shall not be construed to apply to the ordinary and necessary expenses authorized by the general laws of the state...

The issue for this Court then, is whether ¶ 2.1 of the Lease Agreement sufficiently ensures that renewal of the lease agreement beyond the *current* year is solely at NIC's option, and whether such renewal may only be had where funds are duly budgeted and appropriated therefore. Paragraph 2.1 reads:

COLLEGE may, solely at its own option, and when it duly budgets and appropriates funds therefore from revenues legally available to it for the ensuing fiscal year, renew this Lease for an additional annual renewal term. Each annual renewal of this Lease shall be deemed to be exercised by the COLLEGE upon the adoption on or before June 30 of each year, of a budget for the ensuing fiscal year, duly budgeting and appropriating the amount of money required to make the Lease payments during such year. Within ten (10) days following the adoption of a budget duly budgeting and appropriating said funds for the ensuing year, COLLEGE shall deliver to the FOUNDATION a written statement certifying that it has duly budgeted and appropriated said funds for the ensuing year, which written statement shall be accompanied by a copy of the budget so adopted. Each renewal term shall commence on July 23 of the fiscal year following adoption of the budget as provided hereinabove and shall terminate on July 22 of the following calendar year.

Complaint, Exhibit 3, Lease Agreement, p. 2, ¶ 2.1. As argued by the Foundation, there are two steps NIC must take in order to renew the Lease Agreement: (1) budget and appropriate funds from the ensuing year's revenues for renewal of the lease term for an additional year, and (2) delivery to the Foundation, within ten days of adoption of the budget, a written statement certifying NIC has duly budgeted and appropriated funds for the ensuing year, accompanied by a copy of the budget itself. Foundation Reply Brief in Support of Summary Judgment, p. 3. And, as argued by NIC, the only

issue raised at the summary judgment stage by NIC and the Foundation, is whether the lease agreement violates Article VIII, Section 3, of the Idaho Constitution so as to make the lease agreement void. Reply Memorandum in Support of Motion for Summary Judgment, p. 2.

Article VIII, Section 3 of the Idaho Constitution prohibits state subdivisions for incurring indebtedness or liability exceeding the income or revenue of that year unless the indebtedness or liability is approved by two-thirds of qualified electors, but ordinary and necessary expenses are excepted from the provision. *Loomis v. City of Hailey*, 119 Idaho 434, 440, 807 P.2d 1272, 1278 (1991). Thus, the *intent* of NIC to ultimately purchase the Mill Site from the Foundation is simply not relevant to the instant motion. Likewise, the issue of any rental surplus resulting from the initial pre-payment of \$4,000,000 in rent, and the possibility that this "surplus" may not be returned to NIC, should NIC opt to not renew the lease agreement, is also not an issue not before the Court on the instant motion. See Lease Agreement, p. 4, ¶ C. See also, Complaint, p. 4, ¶¶ 19-20. In *In Re University Place/Idaho Water Center Project*, 146 Idaho 527, 547, 199 P.3d 102, 122 (2008) (J. Jones, concurring), Justice Jones stated:

The district court apparently held the view that the performance under the allegedly novated contract was automatically disqualified as being comparable to the performance under the Foundation's contract because the Parking Access Agreement provided the University's parking lease was renewable each year and was subject to termination by the University in the event funds were not available. The fact of the matter is that all state contracts contain those same provisions because Article VIII § 1 of the Idaho Constitution prohibits the State from incurring multi-year indebtedness without submitting the matter to the public for a vote. Article VIII § 3 imposes a similar limitation on public indebtedness with respect to subdivision of state government. It is virtually impossible the present every multi-year governmental contract or lease to the public for a vote. Thus, leases and other contracts that are intended to extend beyond one year always contain provisions (1) making the government's performance subject to the availability of appropriated funds and (2) making the agreement renewable on an annual basis for the contemplated term.

146 Idaho 527, 547, 199 P.3d 102, 122. As such, the lease agreement before the Court in the instant matter does not differ from those entered into by governments and subdivisions of governments. Although the lease at issue likely implicitly contemplates extending beyond one year, so long as it contains specific language making NIC's renewal subject to the availability of therefore appropriated funds and makes the lease term renewable on a yearly basis, the lease complies with the Idaho Constitution.

This was also the result *Dieck*, the 1991 Wisconsin Supreme Court case discussed by NIC at length. There, the Wisconsin Supreme Court reasoned:

"indebtedness" contemplates a "voluntary and absolute undertaking to pay a sum certain. No indebtedness exists if the municipal body may avoid its obligation or if conditions precedent exist... The undertaking must be enforceable by the creditor against the municipal body or its assets.

165 Wis.2d 458, 470, 477 N.W.2d 613, 625. Because the school district in *Dieck* had the right under the non-appropriation option to terminate the lease by opting to not appropriate funds for the following fiscal year's payment, no district funds were jeopardized beyond the current fiscal year. 165 Wis.2d 458, 465, 477 N.W.2d 613, 620. We have precisely that same situation in the present case. As stated in *Dieck*:

The test, [for "indebtedness" under Wisconsin's similar constitutional provision], is not whether the municipal body unit will probably pay or whether the municipal body would be foolish not to pay. The test is whether the municipal body is under an obligation to pay and the creditor has a right to enforce payment against the municipal body or its assets.

165 Wis.2d 458, 470, 477 N.W.2d 613, 625. Under the terms of the Lease Agreement, NIC is not under an obligation to pay and the Foundation has no right to enforce payment by NIC. The *Dieck* Court found that because the lease-purchase at issue in that case contained a "non-appropriation option", the lease agreement did not violate Wisconsin's Constitution because payments were to be made solely from the current year's budget. The *Dieck* Court found the lease-purchase agreement with the non-

appropriation option, meets the purposes of and maintains the integrity of the constitutional debt limitations:

A nonappropriation option preserves for each successive legislative body the responsibility of reviewing the wisdom of the lease and of deciding whether to continue it and shield taxpayers from burgeoning debt. Future generations are not burdened by past decisions.

165 Wis.2d 458, 472, 477 N.W.2d 613, 627. The *Dieck* Court noted the majority of other jurisdictions hold that lease agreements containing non-appropriation clauses do not constitute impermissible debt under similar state constitutional limitations, and cited those cases. 165 Wis.2d 458, 472, n. 8, 477 N.W.2d 613, 627, n. 8. Those cases are: *Department of Ecology v. State Finance Comm.*, 116 Wash.2d 246, 804 P.2d 1241, 1244-47 (1991) ("The overwhelming majority of jurisdictions that have considered the issue have concluded that a nonappropriation clause precludes the creation of debt." 116 Wash.2d 246, 256, n. 9; 804 P.2d 1246, n. 9); *State ex rel. Kane v. Goldschmidt*, 308 Or. 573, 783 P.2d 988, 991-96 (1989) (discussing many prior decisions by the Oregon Supreme Court going back to 1873, consistently adopting the majority view); *Glennon Heights, Inc. v. Central Bank & Trust*, 658 P.2d 872, 878-79 (Colo.1983); *Edgerly v. Honeywell Information Sys., Inc.*, 377 A.2d 104, 108 (Me.1977); *Ruge v. State*, 201 Neb. 391, 267 N.W.2d 748, 750-52 (1978); *Enourato v. New Jersey Bldg. Auth.*, 182 N.J.Super. 58, 440 A.2d 42, 46-47 (1981), *aff'd*, 90 N.J. 396, 448 A.2d 449, 455-56 (1982); *Caddell v. Lexington Cy. Sch. Dist. 1*, 296 S.C. 397, 373 S.E.2d 598, 599-600 (1988); *McFarland v. Barron*, 83 S.D. 639, 164 N.W.2d 607, 609-10 (1969); *Texas Pub. Bldg. Auth. v. Mattox*, 686 S.W.2d 924, 928 (Tex.1985); *Baliles v. Mazur*, 224 Va. 462, 297 S.E.2d 695, 698-700, (1982); *State ex rel. West Virginia Resource Recovery-Solid Waste Disposal Auth. v. Gill*, 174 W.Va. 109, 323 S.E.2d 590, 594-95 (1984). This Court has reviewed those cited cases, and finds the *Dieck* Court's

analysis sound. This view is consistent with a treatise cited by the *Dieck* Court in which:

One author concluded that declaring a lease purchase agreement with a nonappropriation option constitutional was the "optimal approach that establishes both the correct legal rule and encourages utilization of lease-purchasing." Reuven Mark Bisk, *State and Municipal Lease-Purchase Agreements: A Reassessment*, 7 Harv.J.L. & Pub.Pol'y 521, 546 (1984).

165 Wis.2d 458, 472, n. 8, 477 N.W.2d 613, 627, n. 8. The minority view, according to the *Dieck* Court, was noted in *Montano v. Gabaldon*, 108 N.M. 94, 766 P.2d 1328, 1329-30 (1989), where a lease purchase agreement with nonappropriation clause creates moral or equitable obligation to continue payment and therefore creates debt. 165 Wis.2d 458, 472, n. 8, 477 N.W.2d 613, 627, n. 8. This Court is more persuaded that the majority view is correct. That conclusion that the majority view is correct is certainly bolstered by the concurring opinion of Justice Jim Jones in *In Re University Place/Idaho Water Center Project*, 146 Idaho 527, 547, 199 P.3d 102, 122 (2008), (J. Jones, concurring), where the practicality of such arrangements is noted. NIC simply does not incur a liability if it elects to not renew the Lease Agreement for a subsequent year term. Before a liability exists, there must be an enforceable duty against the municipality to make the payment. *Lewis v. Brady*, 17 Idaho 251, 256, 104 P. 900, 301 (1909). (Interpreting Idaho Constitution, Article III, Section 1). Here, there is no enforceable duty against NIC to make the next year's payment. The various hypothetical scenarios presented by plaintiffs of situations that *could* happen which *could* result in liabilities (Plaintiff's Answering Brief in Response to Defendant's Motion for Summary Judgment, p. 10), do not show *current* liabilities, they are all contingent on other events occurring in the future. The fact remains there is no penalty if NIC fails to renew the Lease Agreement.

Plaintiffs cite *O'Bryant v. City of Idaho Falls*, 78 Idaho 313, 303 P.2d 672 (1956), for the proposition:

What cannot be done directly [by the City of Idaho Falls because of constitutional limitations] cannot be accomplished indirectly. That which the constitution directly prohibits may not be done by indirection through a plan or instrumentality attempting to evade the constitutional prohibition.

Plaintiff's Answering Brief in Response to Defendant's Motion for Summary Judgment, pp. 10-11. William McCrory argued that point at oral argument on his behalf. That is an accurate quote from *O'Bryant*. 78 Idaho 313, 325. While *O'Bryant* also dealt with Article III, Section 3 of the Idaho Constitution, the facts are much different to those of the present case. Some of those facts are set forth below in the following quote from *O'Bryant*:

The creation of the Cooperative, its contracts for the purchase of gas and for the sale of its bonds to raise funds for the construction, operation and maintenance of a gas distribution system and the ordinance of the City of Idaho Falls granting an exclusive franchise for thirty years to the Cooperative with the contract provided for by such ordinance are all parts of a plan and design devised to enable the City of Idaho Falls to evade and circumvent the limitations and prohibitions of the constitution and statutes; and to exercise powers not granted to a municipality. The purpose of the whole plan is to allow the City to do indirectly what it cannot do directly, that is, to construct, operate and maintain a system for the distribution of gas; and to pay for same by the creation of *indebtedness and liabilities in excess of its revenues for the current year* without a vote of the qualified electors and without providing for an annual tax to retire such indebtedness.

78 Idaho 313, 327. This quote illustrates just some of the distinctions between the present case and *O'Bryant*, but the italicized portion shows the critical undisputed distinction between the present case and *O'Bryant* which cause plaintiff's reliance upon *O'Bryant* to be completely misplaced. The evidence is uncontradicted by plaintiffs that NIC paid for this lease by revenues it had for the current year. See, Plant fund Expenditures, Plant fund Budget, General Fund Budget Proposal FY 10, Attached to Affidavit of William McCrory; Lease Agreement, p. 1 ¶ C.

At summary judgment, the non-moving party is entitled to having all reasonable

inferences construed in their favor, but must make a showing sufficient to establish the existence of an element essential to its case on which it will bear the burden of proof at trial. *Badell v. Beeks*, 115 Idaho 101, 102, 765 P.2d 126 (1988). Here, plaintiffs have raised the following issues for the Court: that documents evince NIC's underlying intent to purchase the Mill Site, regardless of any stated one-year term of the lease; that the tax agreement allowing the Foundation tax exempt status demonstrates the lease was in fact a sales contract; and that exercise of the non-appropriation option by NIC may result in losses. None of the arguments raised by plaintiffs refute NIC's and the Foundation's claims that the language of the lease contemplates the necessity of affirmative action on the part of NIC in order for renewal of the lease to occur. The language of Justice Jim Jones in his concurring opinion, quoted *supra*, indicates how commonplace these types of leases are, and that the Lease Agreement at issue does not violate of Article VIII, Section 3 of the Idaho Constitution:

The fact of the matter is that all state contracts contain those same provisions because Article VIII § 1 of the Idaho Constitution prohibits the State from incurring multi-year indebtedness without submitting the matter to the public for a vote. Article VIII § 3 imposes a similar limitation on public indebtedness with respect to subdivision of state government. It is virtually impossible the present every multi-year governmental contract or lease to the public for a vote. Thus, leases and other contracts that are intended to extend beyond one year always contain provisions (1) making the government's performance subject to the availability of appropriated funds and (2) making the agreement renewable on an annual basis for the contemplated term.

146 Idaho 527, 547, 199 P.3d 102, 122.

Finally, this Court has been cited to District Judge Hosack's decision in *County of Bonner, Petition for Minimum Security Facility, Petitioner*, Bonner Co. Case No. CV 2008 641. Plaintiff's Answering Brief in Response to Defendant's Motion for Summary Judgment, p. 9. That case is not on point. In that case, Judge Hosack found that

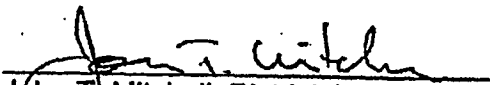
Bonner County created a "lien" upon *its own* property by proposing to transfer such property to a Trustee, would then in turn lease that same property back to Bonner County. Also, Bonner County is statutorily mandated to house its detainees. In the present case, NIC does not own the property in dispute. Thus, NIC cannot lien its own property because it does not own such. NIC cannot lose the use of its asset since it does not own the asset. Finally, NIC is not mandated by statute to maintain a particular activity of the property (like a detention facility), NIC can use the property for whatever use it sees fit while it leases the land (presently it is used as a parking lot, Affidavit of Lawrence Spencer, p. 2, ¶ 3), and if NIC were to so choose, NIC could simply not renew the lease vacate the property. No statute requires NIC to have a parking lot, unlike the situation in Judge Hosack's case.

IV. CONCLUSION AND ORDER.

For the reasons stated above, as to each claim made by plaintiffs, this Court must grant NIC's Motion for Summary Judgment (in which the Foundation has joined).

IT IS HEREBY ORDERED NIC's Motion for Summary Judgment (in which the Foundation has joined) is **GRANTED** as to all claims made by plaintiffs.

Entered this 19th day of March, 2010.


John T. Mitchell, District Judge

Certificate of Service

I certify that on the 19 day of March, 2010, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Party pro se

Lawrence Spencer (*pro se*)
William McCrory (*pro se*)
Thomas R. Macy (*pro se*)

Via U.S. Mail ✓
Via U.S. Mail ✓
Via U.S. Mail ✓

Lawyer

Marc Lyons
Dana Rayborn Wetzel

Fax

664-5884 ✓
664-6741 ✓

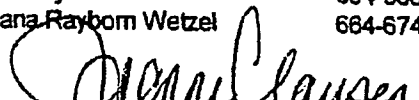

Jeanne Clausen, Deputy Clerk

EXHIBIT B

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Attorneys for Petitioner
Pocatello-Chubbuck Auditorium District
Bannock County, Idaho

FILED
BANNOCK COUNTY
CLERK OF THE COURT

2014 FEB 26 AM 10:15

BY
DEPUTY CLERK

RECEIVED
FEB 27 2014

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

IN THE MATTER OF:

THE POCATELLO-CHUBBUCK
AUDITORIUM DISTRICT,

PETITIONER.

)
) Case No. CV 2013-4838-00
)

) PROPOSED FINDINGS OF FACT AND
) CONCLUSIONS OF LAW
)

This matter having come duly and regularly before this Court for hearing, and Petitioner having submitted a verified Petition for Judicial Confirmation (the "Petition"), along with a memorandum of law and affidavits supporting its Petition, and it appearing that proper notice of the filing of the Petition and Notice of Hearing on the Petition have been given as provided in Title 7, Chapter 13, Idaho Code, and the Court having examined the allegations of the Petition,

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW - 1

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the exhibits annexed thereto, and the memorandum and affidavits in support thereof; the Court, being fully advised in the premises, now makes the following:

Findings of Fact

A. Background

1. On December 16, 2014, Petitioner The Pocatello-Chubbuck Auditorium District (hereinafter the "District" or "Petitioner") filed a Petition, pursuant to Idaho's Judicial Confirmation Law, Chapter 13, Title 7, Idaho Code, seeking a judicial examination and determination of the validity and authority of Petitioner to enter into a lease agreement and related documents to finance the acquisition and construction of a community events center and related improvements on land within the District, including the costs of funding a reserve fund and payment of costs incurred in connection with financing (collectively, the "Project" as further described herein). Petitioner estimates the Project will cost not more than \$7,000,000.

2. The District is a public body organized, existing and operating as an auditorium district pursuant to Title 67, Chapter 49 of the Idaho Code, as amended (the "Act").

3. The District was formed effective January 1, 1999, and encompasses the boundaries of the Cities of Pocatello and Chubbuck existing as of 1998.

4. The District assesses and receives revenues from a hotel/motel room sales tax in the amount of five percent of the receipts derived from hotels and motels within the District, pursuant to Idaho Code § 67-4917B, and in accordance with the order of the District Court for the Sixth Judicial District, Case No. 98-01350B, dated November 20, 2012 (the "Room Tax").

5. The Act authorizes the District to acquire, operate and maintain public convention centers, exhibition halls, community centers and auditorium facilities within the District. To effectuate this general purpose, Idaho Code § 67-4912(f) further authorizes the District to "acquire, dispose of and encumber real and personal property, and any interest therein, including

leases and easements” within the District and Idaho Code Section 67-4922A authorizes the District to contract for the leasing of improvements, and provides, in pertinent part:

[An Auditorium District] board may contract for the leasing of improvements to be constructed upon premises owned by the district or otherwise, and the contract may also provide that at the expiration of the term of the lease, upon full performance of such lease by the district, the improvements and/or real estate, or so much thereof as is leased, may become the property of the district.

B. The Project

6. The District, in accordance with the Act, desires to acquire and construct an approximately 40,000 square foot community events center, which will consist primarily of a large multi-use facility that will accommodate spectator events as well as related meetings and other community events, and will include concessions and food service as well as related exterior landscaping, streetscape, and parking (the “Improvements”). The District intends to construct the Improvements on a six-acre site located within the boundaries of the District (the “Site”). In connection with the financing of the acquisition and construction of the Improvements on the Site, the District also intends to fund a reserve fund and to pay costs of issuance of the financing (collectively, the “Project”).

7. In September 2013, the District entered into an Option and Agreement to Purchase Real Property (the “Option Agreement”), whereby it acquired an option to purchase the approximately six-acre Site on Knudsen Road in the City of Chubbuck. The District intends to construct the Improvements on the Site.

8. The District has requested the cooperation of the Chubbuck Development Authority (the “Agency”) to finance the Project, in accordance with Idaho Code § 67-4912(d), which provides that the District may enter into contracts and agreements with governmental entities and cooperate with one or more of them to build, erect, market, or construct facilities within the District, and Idaho Code § 50-2015, which authorizes the District to dedicate, sell,

convey or lease any of its respective property to an urban renewal agency, to incur the entire expense of public improvements for an urban renewal project, and to enter into any such sale, conveyance, lease or agreement with an urban renewal agency without appraisal, public notice, advertisement, or public bidding.

9. The Agency is an urban renewal agency of the City of Chubbuck, Idaho, organized and operating pursuant to Title 50, Chapters 20 and 29, Idaho Code (the "Urban Renewal Law").

10. In accordance with the Act and Urban Renewal Law, the District and the Agency have entered into a Development Agreement ("Development Agreement"), pursuant to which the Agency has agreed to cooperate with the District in the financing of the Project by issuing Bonds and entering into a Ground Lease and Lease Agreement between the Agency and the District, as hereinafter described.

11. After the District has exercised its option to purchase the Site pursuant to the Option Agreement, the District will ground lease the Site to the Agency pursuant to the Ground Lease (the "Ground Lease") supplied to the Court as Exhibit "E" to the Affidavit of Raul Cano.

12. The Agency will then sublease the Site and lease the Improvements to the District under the Lease Agreement (the "Lease Agreement") supplied to the Court as Exhibit "F" to the Affidavit of Raul Cano. Pursuant to the Lease Agreement, the District will construct the Improvements as the agent of the Agency, and will lease and operate the Improvements, once constructed.

13. The initial term of the Lease Agreement will end at the end of the District's fiscal year, September 30, 2014. The Lease Agreement is renewable for subsequent one-year terms only upon appropriation, budgeting and affirmative notice by the District of its intent to renew the Lease Agreement. The Lease Agreement provides:

The District may, solely at its option, renew this Lease by budgeting funds for Lease Payments for additional Renewal Terms and by giving Notice of Intent to Renew effective October 1 to the Agency not later than July 1 of each year. In the event the Agency shall not have received the Notice of Intent to Renew by August 1 of any year, the Agency will notify the District of such non-receipt, and the District shall then have until September 1 to deliver to the Agency its Notice of Intent to Renew. If the District fails to deliver the Notice of Intent to Renew by such date, or if the District shall at any time notify the Agency that the District has elected to not renew this Lease for an additional Renewal Term, an Event of Nonrenewal shall be deemed to have occurred and the Agency and the Trustee may exercise the remedies provided herein and in the Trust Indenture.

14. Section 5.3(a) of the Lease Agreement expressly provides that “the obligation of the District to make Lease Payments extends only through the Initial Term and any applicable Renewal Term. Such obligation terminates at the expiration of the Initial Term or any applicable Renewal Term.”

15. If the District chooses not to appropriate, budget, and provide affirmative notice to the Agency of its intent to renew for the next fiscal year, the Lease Agreement by its express terms will terminate, and the District will have no further liability beyond the amount budgeted and appropriated for the current fiscal year. Accordingly, the Lease Agreement will be renewable on an annual basis and will not bind the District beyond its current fiscal year.

16. In the event the District does not renew the Lease Agreement for a subsequent Renewal Term, the Agency, as lessee under the Ground Lease, will relet the Improvements and collect rental payments to apply toward payment of the Bonds until the Bonds are paid in full. The Ground Lease also requires the Agency to pay fair market ground rent to the District under the Ground Lease in the event the Lease Agreement is not renewed by the Agency. Once the Bonds are paid in full, the Lease Agreement and Ground Lease terminate by their express terms and the Site and Improvements will revert back to the District’s ownership.

17. The District has the right to purchase the Improvements at any time at a predetermined price and upon payment in full of the Bonds, in which case the Improvements and the Site will revert back to the District and the Lease Agreement and Ground Lease terminate.

18. Accordingly, the Site and Improvements will revert back to the District's ownership upon termination of the Lease Agreement and Ground Lease regardless of whether the District renews the Lease Agreement for any Renewal Terms.

C. Plan of Finance

19. Upon favorable ruling on this Petition, and in accordance with the Development Agreement, the Agency will issue Bonds pursuant to Section 50-2012, Idaho Code, to be entitled "Chubbuck Development Authority Lease Revenue Bonds, Series 2014" (the "Bonds"), and will enter into a trust indenture (the "Indenture") providing the terms and conditions of the Bonds. The Bonds will be repaid from rental payments due under the Lease Agreement (the "Lease Payments") and not from any other resources or credit of the Agency.

20. The Bonds will be issued for an amount sufficient to provide funds to finance the Project, and the Lease Agreement, in turn, will provide for Lease Payments sufficient to enable the Agency to pay all principal and interest coming due on the Bonds. The District anticipates the total cost of the Project, including acquisition of the Site, to be approximately \$6,800,000, consisting of the following estimated expenses:

<u>Description</u>	<u>Estimated Cost</u>
Acquisition of the Site	\$ 800,000
Direct construction costs	3,200,000
Site work, permitting, and related costs	1,000,000
Architect and engineering fees	250,000
Fixtures, furniture, and equipment	400,000
Costs of issuance	155,000
Funding of reserve fund	545,000
Contingency	450,000
Total	\$6,800,000

The District will determine the final amount once the construction contract is finalized and the total cost of the Improvements have been determined.

21. As of September 30, 2013, the District had an unrestricted fund balance of approximately \$1,400,000 and the District estimates annual receipts from the Room Tax to be approximately \$860,000, without the addition of any hotels to the District.

22. The District expects to use existing cash reserves to acquire the Site and purchase additional furniture and equipment, as necessary for operation of the Improvements. The District expects to seek financing for approximately \$6,000,000 through the Agency.

23. The District intends to pay Lease Payments due under the Lease Agreement from receipts from the Room Tax (the "Revenues"). Based on estimates received from the District's financial advisor, the District and the Agency expect the Revenues to be sufficient to make Lease Payments for the Initial Term and any applicable Renewal Term.

D. Procedural History

24. On November 14, 2013, the District conducted a public hearing addressing the advisability of the Project and the filing of the Petition. A notice of this public hearing, setting forth the time, place and summary of the matter in the form and content prescribed in Section 7-1306(2), Idaho Code, was published in the *Idaho State Journal*, a newspaper of general circulation in Bannock County, on October 29, 2013, and was posted at or near the main door of the District's administrative office prior to the hearing. The publishing, posting and mailing of the notice of public hearing was conducted in compliance with Idaho Code Section 7-1304. Following the November 14, 2013 hearing, on December 13, 2013, after the passage of at least fourteen (14) days, the District approved and adopted a Resolution (the "Resolution") to proceed with the filing of judicial confirmation proceedings.

25. After the Petition was filed on December 16, 2013, the Clerk of the District issued a Notice of Hearing on Petition (the "Notice") indicating that the Petition had been filed, and notifying all interested parties where to examine the Petition and Resolution and/or the time and place of the hearing on the Petition. Commencing on January 3, 2014, for a period of more than thirty (30) days, said Notice was posted in the District's administrative office. The Notice was also published for three consecutive weeks on January 21, January 28, and February 4, 2014 in the *Idaho State Journal*, a newspaper of general circulation within the District. Such public posting and publication was conducted in compliance with Idaho Code § 7-1306, all as more fully shown by the Affidavit of Posting, Mailing and Publishing of Notice of Public Hearing and of Posting and Publishing of Notice of Hearing on Judicial Confirmation, filed with the Court on January 27, 2014, and in the Supplemental Affidavit of Publishing of Notice of Hearing on Judicial Confirmation, filed with the Court on February 6, 2014.

26. The District filed its Memorandum in Support of Petition for Judicial Validation (the "Memorandum"), together with four supporting affidavits, and one supplemental affidavit.

27. The District presented the following question to the Court: "Whether the Lease Agreement and related documents, which obligated the District for an initial term corresponding to its fiscal year, and are renewable for subsequent one-year terms only upon appropriation, budgeting and affirmative notice of the District's intent to renew, are valid obligations under Article VIII, Section 3 of the Idaho Constitution."

28. The Court held a hearing in open court on February 10, 2014, for the purpose of identifying any interested parties appearing in opposition to the Petition. Although the hearing was well attended no one sought to oppose the Petition.

Conclusions of Law

1. The proceeding under the Judicial Confirmation Law, Chapter 13, Title 7, Idaho Code, is a proceeding *in rem*. Publication and posting as authorized by the Judicial Confirmation Law is a valid method of vesting jurisdiction in this Court over all interested parties and the subject matter. *Smith v. Progressive Irr. Dist.*, 28 Idaho 812, 156 P. 1133 (1916); *Knowles v. New Sweden Irr. Dist.*, 16 Idaho 235, 101 P. 87 (1908). Accordingly, this Court has subject matter jurisdiction of this matter and has jurisdiction to adjudicate this matter and validate the proceedings taken by the District pursuant to Idaho Code, Chapter 13, Title 7.

2. This action was properly instituted by the District in accordance with and pursuant to Idaho's Judicial Confirmation Law, Chapter 13, Title 7, Idaho Code.

3. This Court has made an examination of the statutes authorizing the District to take the action which is the subject matter of the Petition, the allegations of the Petition identifying potential constitutional issues raised by the action taken and proposed to be taken by the District, and the memorandum and accompanying affidavits submitted by District. There being no challenge to those statutes, or to the proposed actions of the District to proceed with the Project, and because there exists no facial constitutional infirmity that the Court is required to recognize, *sua sponte*, the statutes and actions of the District with regard to the Project are deemed constitutional.

4. There being no opposition to the factual allegations of the Petition, the allegations are taken as true. The District properly acted in pursuance of its duly authorized powers with regard to the Project.

5. Article VIII, § 3 of the Idaho Constitution provides, in pertinent part: "No county, city, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income

and revenue provided for it for such year, without the assent of two thirds (2/3) of the qualified electors thereof voting at an election to be held for that purpose . . .”

6. The Lease Agreement and related financing documents do not constitute an “indebtedness or liability” within the meaning of Article VIII, § 3 of the Idaho Constitution, exceeding the income and revenue of the District for the current fiscal year, because the District will have the right annually under the express language of the Lease Agreement not to renew the lease, and therefore the District will at no time be obligated to make any payments exceeding the income and revenue provided to it for the then-current fiscal year.

7. The District is not required by the Constitution of the State of Idaho to submit the obligations under the Lease Agreement to a vote of the electorate.

8. The findings and conclusions made herein are binding upon all persons interested in the outcome of this proceeding including but not limited to all persons or entities who received actual or constructive notice of the filing of the Petition.

DATED THIS 24 day of February, 2014.


STEPHEN S. DUNN
DISTRICT JUDGE

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16 day of Feb, 2014, I caused to be served a true copy of the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW by the method indicated below, and addressed to each of the following:

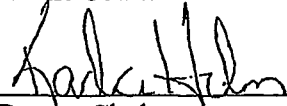
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☐ Telecopy

Clerk of the Court:

By: 
Deputy Clerk

MAR 14 2014

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BANNOCK COUNTY
CLERK OF THE COURT

2014 MAR 13 AM 10:15

BY
DEPUTY CLERK

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Attorneys for Petitioner
Pocatello-Chubbuck Auditorium District
Bannock County, Idaho

STATE OF IDAHO }
County of Bannock } ss.

I hereby certify that the foregoing is a full, true and
correct copy of an instrument as the same now
remains on file and of record in my office.
WITNESS my hand and official seal hereto affixed

this 13 day of March, 2014

CLERK OF THE DISTRICT COURT
EX OFFICIO AUDITOR AND RECORDER

By Deputy

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

IN THE MATTER OF:

THE POCATELLO-CHUBBUCK
AUDITORIUM DISTRICT,

PETITIONER.

Case No. CV 2013-4838-00

AMENDED JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Proper notice of the filing of the Petition and Notice of Hearing on the Petition was been given as provided in Title 7, Chapter 13, Idaho Code;

AMENDED JUDGMENT - 1

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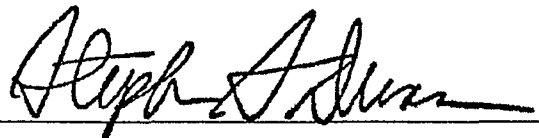
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2. The Pocatello-Chubbuck Auditorium District's authorization, execution and delivery of the Lease Agreement and related financing documents does not create a debt or liability under Article VIII, § 3 of the Idaho Constitution; and

3. The Lease Agreement, when executed and delivered, will be legal, valid, and binding in accordance with its terms.

DATED THIS 13 day of ^{March}~~February~~, 2014.

By 
DISTRICT JUDGE

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13 day of March, 2014, I caused to be served a true copy of the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW by the method indicated below, and addressed to each of the following:

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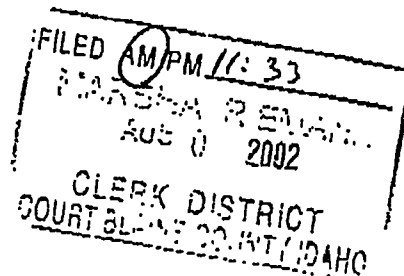
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☐ Overnight Mail
☐ E-mail
☐ Telecopy

Clerk of the Court:

By: 
Deputy Clerk

EXHIBIT C

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 E-mail address: mcm@msbtlaw.com



Attorneys for Petitioner

IN THE DISTRICT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

In re:	)	Case No. SP-022782
)	
SCHOOL DISTRICT NO. 61,	)	FINDINGS OF FACT AND
Blaine County, Idaho, a	)	CONCLUSIONS OF LAW
political subdivision of)	
the State of Idaho,)	
)	
Petitioner.)	
)	
)	

This matter having come on duly and regularly before this Court for hearing, and Petitioner having submitted a verified Petition for Judicial Confirmation, and a memorandum of law and affidavits in support of its petition, and it appearing that proper notice of the filing of the Petition for Judicial Confirmation has been given as provided in Title 7, Chapter 13, Idaho Code, and the Court having examined the allegations of the Petition, the exhibits annexed thereto, and the memorandum and affidavits in support thereof; the Court, being fully advised in the premises, now makes the following:

FINDINGS OF FACT

I.

Petitioner, School District No. 61, Blaine County, Idaho (the "Petitioner"), is a public school district and a political subdivision within the definition contained in Section 7-1303(b), Idaho Code, and has filed this action pursuant to Sections 7-1301, et seq., Idaho Code (the "Judicial Confirmation Law"), seeking judicial confirmation of the validity of the Petitioner to enter into a site lease, a lease/purchase agreement, a trust agreement, and related documents (collectively, the "Financing Documents") in order to effectuate the lease/purchase financing of certain school facilities.

II.

Pursuant to Section 7-1304, Idaho Code, the Board of Trustees (the "Board") of Petitioner, on April 16, 2002, held and conducted a public hearing to consider whether it should adopt a resolution authorizing the filing of a petition under the Judicial Confirmation Law. A notice of the public hearing, in the form and content described in Section 7-1306(2), Idaho Code, setting forth the time, place and summary of the matter, was published once in newspapers of general circulation within Petitioner's boundaries and the official newspapers of Petitioner, at least fifteen (15) days prior to the public hearing. Following the public hearing, and after the passage of at least fourteen (14)

days, the Board adopted Resolution No. 02-4, authorizing the filing of a petition for judicial confirmation and making certain findings and determinations.

III.

Pursuant to Sections 7-1305 and 7-1306, Idaho Code, Notice of Filing of Petition for Judicial Confirmation and Continuation of Date of Hearing was duly served by publication once a week for three (3) consecutive weeks by three (3) weekly insertions in the Idaho Mountain Express and in the Wood River Journal, newspapers of general circulation within Petitioner, and by posting in a prominent place at or near the main door of the administrative office of Petitioner at least thirty (30) days prior to the date fixed in the notice of hearing on the Petition, all as more fully shown by the Affidavit of Posting of District Clerk Cathy Zaccardi and by the Affidavits of Publication on file herein.

IV.

No person or entity has filed any written appearance or pleading or has otherwise appeared herein. The allegations of the Verified Petition for Judicial Confirmation and the authenticity of the documents annexed thereto as exhibits are therefore deemed to be admitted.

V.

A public school district in Idaho is authorized, pursuant to Section 33-901, Idaho Code, to create and

establish a school plant facilities reserve fund, to deposit into such fund all moneys for such fund accruing from taxes levied under Section 33-804, Idaho Code, together with interest earnings and other monies appropriated thereto by the school district, and to make disbursements from such funds for purposes authorized in Section 33-1102, Idaho Code, and for lease and lease/purchase agreements for such purposes and to repay loans from commercial lending institutions extended to pay for the construction of school plant facilities.

VI.

In order to levy a special tax for a school plant facilities reserve fund, a school district is required to obtain the approval of the electors voting at a special election called and conducted pursuant to Section 33-804, Idaho Code. Pursuant to the authority of Sections 33-804 and 33-901, Idaho Code, the Board of Trustees (the "Board") of Petitioner, on March 14, 2000, duly adopted Resolution No. 00-1 (subsequently amended by Resolution No. 00-1A, adopted on April 11, 2000), creating a school plant facilities reserve fund and ordering a special election to be held on May 2, 2000, on the question of authorizing a school plant facilities reserve fund levy in the amount of \$4,000,000 per year for the fiscal year beginning July 1, 2001, and continuing each year thereafter for a total of ten years.

VII.

Pursuant to Resolution No. 00-1, as amended, a special school plant facilities reserve fund levy election was held and conducted in the District on May 2, 2000, on the following question:

SHALL THE BOARD OF TRUSTEES OF SCHOOL DISTRICT NO. 61 BE AUTHORIZED, PURSUANT TO SECTION 33-804, IDAHO CODE, TO CERTIFY TO THE BOARD OF COMMISSIONERS OF BLAINE COUNTY, IDAHO, A SCHOOL PLANT FACILITIES RESERVE FUND LEVY, IN ADDITION TO ALL OTHER LEVIES, IN THE AMOUNT OF \$4,000,000.00 FOR THE FISCAL YEAR COMMENCING JULY 1, 2001, AND CONTINUING EACH YEAR IN THE AMOUNT OF \$4,000,000.00 FOR A TOTAL OF TEN (10) YEARS FOR THE PURPOSE OF FINANCING THE COSTS OF ACQUIRING, PURCHASING, OR IMPROVING A SCHOOL SITE OR SITES; CONSTRUCTING A SCHOOL HOUSE OR HOUSES OR OTHER BUILDINGS; DEMOLISHING OR REMOVING SCHOOL BUILDINGS; ADDING TO, REMODELING, OR REPAIRING ANY EXISTING BUILDING; FURNISHING AND EQUIPPING ANY BUILDING OR BUILDINGS, INCLUDING ALL LIGHTING, HEATING, VENTILATION AND SANITARY FACILITIES AND APPLIANCES NECESSARY TO MAINTAIN AND OPERATE THE BUILDINGS OF THE DISTRICT; PURCHASING SCHOOL BUSES; ENTERING INTO LEASE AND LEASE/PURCHASE AGREEMENTS FOR SUCH PURPOSES; AND REPAYING LOANS FROM COMMERCIAL LENDING INSTITUTIONS EXTENDED TO PAY FOR THE CONSTRUCTION OF SCHOOL PLANT FACILITIES, ALL AS PROVIDED IN THE RESOLUTION ADOPTED BY THE BOARD OF TRUSTEES ON MARCH 14, 2000?

VIII.

Under Section 33-804(1), Idaho Code, the approval of at least 55% of the electors voting at the special election was required in order for the special school plant facilities reserve fund levy by Petitioner to be approved. At the special election of May 2, 2000, the proposition for the

special school plant facilities reserve fund levy was approved by the electors of the District by a vote of 2095 yes to 1474 no. The margin of approval thus exceeded the 55% voter approval requirement of Section 33-804(1), Idaho Code. Pursuant to such approval, Petitioner is now collecting, annually, in addition to all other taxes, the amount of \$4,000,000 for the purpose of acquiring and paying for the construction and acquisition of school plant facilities.

IX.

Petitioner is expressly authorized by Sections 33-601(1) and 33-901, Idaho Code, to enter into lease and lease/purchase agreements to finance the acquisition and construction of school plant facilities and to make lease and lease/purchase payments from the proceeds of a special school plant facilities reserve fund levy. Pursuant to such authority, Petitioner's Board has determined that it is in the best interests of Petitioner and its taxpayers to acquire and construct school plant facilities, including the new Wood River High School, to be located in Hailey, Idaho, the new Carey High School, to be located in Carey, Idaho, and the new Woodside Elementary School, to be located in Hailey, Idaho (the "Facilities"), to finance the acquisition and construction of the Facilities under a lease/purchase agreement, as authorized by the statutes cited above, and to make rental payments on the lease/purchase agreement from

the proceeds of the special school plant facilities reserve fund levy approved by the electors at the special election held and conducted on May 2, 2000. In order to obtain the necessary funds to finance the construction of the Facilities at the most favorable interest rates, the Board has further determined that certificates of participation in the lease/purchase agreement should be marketed on the public securities market through a securities underwriting firm, Seattle-Northwest Securities Corporation (the "Underwriter").

X.

Pursuant to such determination, the Board proposes to enter into and execute the following documents (hereinafter collectively referred to as the "Financing Documents") in order to effectuate the lease/purchase financing of the acquisition and construction of the Facilities as approved by the electors:

1. A Site Lease (the "Site Lease") between Petitioner and U.S. Bank National Association (the "Bank"), substantially in the form annexed to the Petition as Exhibit "A."
2. A Lease/Purchase Agreement (the "Lease/Purchase Agreement") between the Bank and Petitioner, substantially in the form annexed to the Petition as Exhibit "B," pursuant to which the Facilities

will be constructed on the property included in the Site Lease and leased to Petitioner.

3. A Trust Agreement by and among Petitioner, the Bank as lessor, and the Bank as Trustee, substantially in the form annexed to the Petition as Exhibit "C," whereby the Board will cause to be issued Certificates of Participation in the amount of approximately \$24,405,000 (the "Certificates"), the proceeds of which will be utilized to pay the costs of acquisition and construction of the Facilities for lease to Petitioner pursuant to the Lease/Purchase Agreement and related costs, the Certificates to be paid from annual rental payments from Petitioner.
4. A Certificates Purchase Agreement between Petitioner and Underwriter for the purchase of the Certificates, substantially in the form annexed to the Petition as Exhibit "D."
5. An Assignment Agreement, substantially in the form annexed to the Petition as Exhibit "E," assigning to the Trustee the lessor's rights under the Lease/Purchase Agreement.
6. A resolution, substantially in the form annexed to the Petition as Exhibit "F," approving the execution and delivery of the Financing Documents.

XI.

The Lease/Purchase Agreement, if executed by Petitioner, would be an "annual appropriation" lease, which would obligate Petitioner to make an initial rental payment for the first year of approximately \$3,409,545. Petitioner presently has funds duly budgeted and available in that amount in the current fiscal year's budget. The Lease/Purchase Agreement further provides that Petitioner shall have the right, solely at its option, to renew the Lease/Purchase Agreement for additional one-year renewal terms for up to nine (9) years, and that, if it renews the lease and duly makes its rental payments thereunder for the entire term of the Lease/Purchase Agreement, Petitioner shall become the owner in fee of the Facilities. The Lease/Purchase Agreement further provides, however, that Petitioner shall not be obligated to make rental payments beyond the then-current fiscal year for which payments have been duly budgeted and appropriated. In the event that Petitioner shall fail to appropriate funds for any annual lease renewal, then the Trustee shall have the right to take possession of the Facilities on behalf of the holders of the Certificates, and the Petitioner shall have no further payment obligation under the Lease/Purchase Agreement.

XII.

Article 8, Section 3, of the Idaho Constitution provides, in pertinent part: "No county, city, board of

education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two thirds (2/3) of the qualified electors thereof voting at an election to be held for that purpose..."

XIII.

Petitioner has been advised by its bond counsel that the Idaho Supreme Court has not had occasion to determine whether an annual-appropriation lease/purchase agreement constitutes an "indebtedness or liability" exceeding the current year's revenues in violation of Article 8, Section 3, Idaho Constitution, and that bond counsel therefore cannot issue, in connection with the Certificates, its unqualified approving opinion in the customary form. Without an unqualified approving opinion of bond counsel, Petitioner cannot obtain an investment-grade rating from national credit rating agencies, and the Certificates therefore cannot be sold at the lowest and most favorable interest rates which would otherwise be available to Petitioner, all to the financial detriment of Petitioner and its taxpayers.

XIV.

Petitioner seeks a judicial determination of the validity of the Financing Documents in light of the issue,

arising under Article 8, Section 3, Idaho Constitution, as to whether an annually-renewable lease/purchase agreement, such as the Lease/Purchase Agreement proposed to be executed by Petitioner, would violate the constitutional prohibition against incurring any indebtedness or liability exceeding the income and revenue of Petitioner for the then-current fiscal year.

Based upon the foregoing Findings of Fact the Court now makes the following:

CONCLUSIONS OF LAW

I.

Proceedings under the Judicial Confirmation Law, Title 7, Chapter 13, Idaho Code, are proceedings in rem, and jurisdiction of the subject matter and of all interested parties is lawfully obtained through publication and posting as provided therein. Publication and posting as authorized by the Judicial Confirmation Law is a valid method of vesting jurisdiction of this Court over all interested parties and over the subject matter.

II.

Jurisdiction of this Court over the subject matter of the Petition for Judicial Confirmation and over all interested parties has, as a matter of law, been obtained herein by publication and posting as provided by law.

III.

The allegations of the Petition for Judicial Confirmation are deemed to be admitted by all interested parties who failed to appear in objection thereto. This Court is authorized to render the judgment as prayed for in Petitioner's Petition for Judicial Confirmation and as set forth hereinafter.

IV.

The Lease/Purchase Agreement and other Financing Documents do not constitute an "indebtedness or liability" within the meaning of Article 8, Section 3, Idaho Constitution, exceeding the income and revenue of Petitioner for the current fiscal year, because Petitioner would at no time be obligated to make any payments exceeding the income and revenue provided to it for the then-current fiscal year.

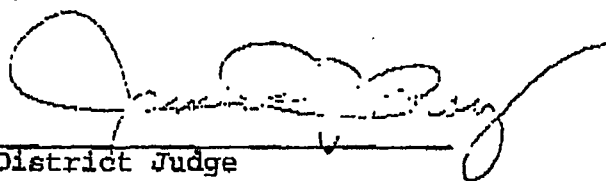
V.

Petitioner is authorized under the Constitution and laws of the State of Idaho to enter into the Financing Documents and to cause the Certificates to be issued and sold in accordance with the Financing Documents, and the Financing Documents, when duly executed by the parties thereto, will be valid obligations, enforceable in accordance with their terms.

Based on the Findings of Fact and Conclusions of Law, and good cause appearing therefor,

THE COURT HEREBY DIRECTS that Judgment be entered in accordance with the Petition for Judicial Confirmation, to the effect that Petitioner is authorized under the Constitution and laws of Idaho to enter into the Financing Documents and to cause the Certificates to be issued and sold for the purposes set forth in the Financing Documents, and that the Financing Documents, and in particular the Lease/Purchase Agreement, do not and would not constitute an indebtedness or liability of the Petitioner exceeding the income and revenue provided to the Petitioner for the then-current fiscal year.

DATED the 5 day of August, 2002.

By 
District Judge

State of IDAHO } ss
County of Blaine }

I do hereby clarify that the foregoing is a full, true and correct copy of the original therefore, on file in my office.

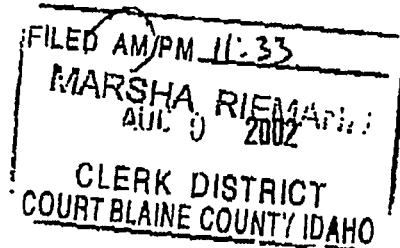
In witness thereof, I will hereunto set my hand and affix by official seal. this 5 day of Aug 2002

MARSHA RIEMANN
Clerk District Court


Deputy

Michael C. Moore, ISB# 1188
MOORE SMITH BUXTON & TURCKE, CHARTERED
225 North 9th Street, Suite 420
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202
E-mail address: mcm@msbtlaw.com

Attorneys for Petitioner



IN THE DISTRICT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

In re:	)	Case No. SP-022782
)	
SCHOOL DISTRICT NO. 61,)	
Blaine County, Idaho, a	)	JUDGMENT
political subdivision of)	
the State of Idaho,)	
)	
Petitioner.)	
)	
)	

The Court having entered its Findings of Fact and
Conclusions of Law in the above-entitled action, and good
cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

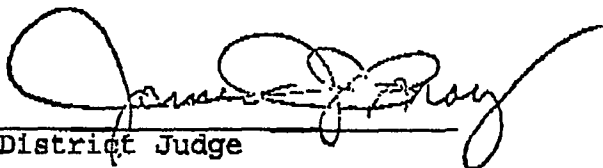
(1) Petitioner is authorized under the Constitution
and laws of Idaho to enter into the proposed Financing
Documents, particularly including the following documents
annexed to the Petition for Judicial Confirmation:

- a. Site Lease between Petitioner and U.S. Bank
National Association;

- b. Lease/Purchase Agreement between U.S. Bank National Association and Petitioner;
- c. Trust Agreement by and among Petitioner, U.S. Bank National Association as lessor, and U.S. Bank National Association as trustee;
- d. Certificates Purchase Agreement between Petitioner and Seattle-Northwest Securities Corporation;
- e. Assignment Agreement;
- f. Resolution approving the execution and delivery of the Financing Documents.

(2) The Financing Documents, and in particular the Lease/Purchase Agreement, do not and, when duly executed and delivered substantially in the forms presented to the Court, will not constitute an indebtedness or liability of Petitioner exceeding the income and revenue provided to the Petitioner for the then-current fiscal year.

DATED the 5 day of August, 2002.

By 
District Judge

State of IDAHO }
County of Blaine }

I do hereby certify that the foregoing is a full, true and correct copy of the original therefore, on file in my office.

In witness thereof, I will hereunto set my hand and affix my official seal, this 5th day of August, 2002.

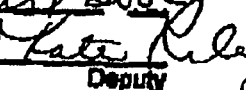
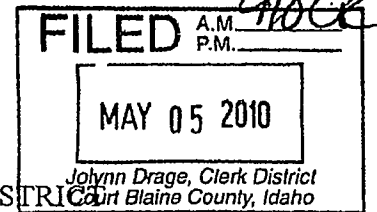
MARSHA RIEMANN 
Clerk District Court Deputy

EXHIBIT D



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

IN THE MATTER OF:

SCHOOL DISTRICT NO. 61, BLAINE
COUNTY, IDAHO,

Petitioner.

Case No. CV2010-170

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This matter having come duly and regularly before this Court for hearing, and Petitioner having submitted a verified Petition for Judicial Confirmation (the "Petition"), along with a memorandum of law and affidavits supporting its Petition, and it appearing that proper notice of the filing of the Petition and Notice of Hearing on the Petition have been given as provided in Title 7, Chapter 13, Idaho Code, and the Court having examined the allegations of the Petition, the exhibits annexed thereto, the memorandum and affidavits in support thereof; and the comments of Diane Barker, Wayne Willich, Elizabeth Schwerdtle, and Jeff Bevins made in open court on April 19, 2010, the Court, being fully advised in the premises, now makes the following:

Findings of Fact

A. Background

1. On March 8, 2010, Petitioner School District No. 61, Blaine County, Idaho (hereinafter the "District" or "Petitioner") filed a Petition, pursuant to Idaho's Judicial Confirmation Law, Chapter 13, Title 7, Idaho Code, seeking a judicial examination and determination of (a) the authority of the District to enter into certain lease agreements and related

documents, and (b) whether certain improvements to its facilities are “ordinary and necessary” expenses under Article VIII, § 3 of the Idaho Constitution.

2. The District, a public school district, is a public body organized and operating pursuant to Title 33 of the Idaho Code, as amended.

3. The District is empowered by Idaho Code § 39-8002 to “assure the safety of children and others who use Idaho’s public schools.” The District is further empowered by Idaho Code § 33-601 to “rent to or from others, school buildings or other property used, or to be used for school purposes.” The District is also empowered by Idaho Code § 33-601A to enter into lease-purchase agreements for goods, equipment, buses or portable classrooms, provided the agreement is in writing and meets the requirements set forth in § 33-601A.

4. Idaho Code § 33-901 empowers a school district to create and establish a school plant facilities reserve fund. Idaho Code § 33-804 empowers a school district to submit to its voters the question of whether the district should be authorized to impose a school plant facilities reserve fund levy. Section 33-804(1), Idaho Code, requires at least fifty-five percent (55%) of the electors voting at the special election to approve the school plant facilities reserve fund levy.

5. In Fall 2009, the District submitted to its voters the question of whether the District should be authorized to levy a school plant facilities reserve fund levy in the amount of up to \$5,980,000 per year for 10 years (the “Plant Levy”). The District’s voters approved the Plant Levy at an election held in the District on October 29, 2009, with 1900 votes in favor and 1320 against, a majority of approximately fifty-nine percent (59%).

B. The Project

6. In connection with the election for the Plant Levy, the District developed a list of projects to be financed with the Plant Levy, including: a new elementary school; classroom additions to Wood River Middle School; site improvements to the Carey school site;

construction of a maintenance facility; construction of a multipurpose room addition at Bellevue Elementary; auditorium remodel at the Community Campus; energy conservation retrofits, facility improvements, and installation of fire suppression systems; technology improvements; and safety and security improvements throughout the District -- a total expense of \$55,980,000 (collectively referred to herein as the "Project"). The District wishes to accelerate the delivery of a number of these facility improvements through a financing arrangement in order to take advantage of the favorable interest rate market, the current construction bidding environment, a four million dollar federal matching grant, and new tax credit bond instruments established by the federal stimulus act, and to begin realizing at an earlier time operating cost savings that certain improvements will provide.

7. There are three components to the Project-- the Real Property Improvements, the Improvements and Equipment, and the Ordinary and Necessary Improvements, which improvements are a subset of the Improvements and Equipment.

8. The Real Property Improvements include (i) construction of a new elementary school; (ii) construction of eight additional classrooms at Wood River Middle School; (iii) construction of a maintenance facility; and (iv) construction of a multipurpose room addition at Bellevue Elementary School. The District proposes to finance the Real Property Improvements through a lease-purchase arrangement (the "Property Lease"). The initial term of the Property Lease will end at the end of the District's fiscal year in which the Property Lease is signed, and will be renewable annually only upon appropriation, budgeting and affirmative notice by the District of its intent to renew the Property Lease. In the event the District elects not to appropriate funds for lease payments, the term of the Property Lease will end, and the District will have no further liability beyond the amount appropriated for the current term. Accordingly,

the Property Lease will be renewable on an annual basis and will not bind the District beyond its current fiscal year.

9. The Improvements and Equipment include certain improvements to existing school facilities, including (i) energy conservation retrofits; (ii) facility improvements; (iii) fire suppression systems; (iv) site improvements at Carey Elementary school; (v) renovation of the auditorium at the District's Community Campus; (vi) technology upgrades; and (vii) safety and security improvements. The District proposes to finance the Improvements and Equipment through a lease-purchase arrangement (the "Equipment Lease"). The initial term of the Equipment Lease will end at the end of the District's fiscal year in which the Equipment Lease is signed, and will be renewable annually only upon appropriation, budgeting and affirmative notice by the District of its intent to renew the lease. If the District elects not to appropriate funds for the lease payment and does not renew the lease, the Equipment Lease will end and the District will have no further liability beyond the amount budgeted and then appropriated for the current fiscal year. Accordingly, the Equipment Lease will be renewable on an annual basis and will not bind the District beyond its current fiscal year.

10. The District intends to pay lease payments from the revenues the District receives from the Plant Levy. Because the Plant Levy has been authorized, entering into the Leases will not result in an additional cost or expense to the District that must be funded from its general fund budget, from state appropriations, or from any source other than the Plant Levy.

11. The District asserts that certain of the Improvements and Equipment identified in Paragraph 9 are also "ordinary and necessary" improvements, because the improvements are to repair existing buildings, to ensure the buildings comply with applicable code provisions, and to ensure the safety and suitability of the District's facilities. The District intends to make the

following Ordinary and Necessary Improvements, which comprise approximately \$17,000,000 of the total project costs: (i) installation of fire sprinkler systems; (ii) replacement of doors and windows to address safety concerns and compliance with the Americans with Disabilities Act, 42 U.S.C.A. §§ 12101-12213 (the "ADA"); (iii) improvements to the Community Campus Building auditorium required for ADA compliance and to address safety issues; (iv) improvements at the Carey School Site to make the school site and play areas safer; (v) installation of covered walkways or a snowmelt system to alleviate snow and ice hazards at the Carey school site and Hemingway Elementary; (vi) repair and/or replacement of the HVAC systems at Hailey Elementary, Bellevue Elementary, Carey Elementary, the Community Campus Building, and Hemingway Elementary, which are failing and/or provide inadequate ventilation; (vii) improvements to provide safe access to HVAC systems at Bellevue Elementary and Carey High School; (viii) relocation of a power transformer at Hailey Elementary to alleviate fire and other safety risks; and (ix) the installation of certain security systems and equipment necessary to ensure safety of students, staff and visitors. The Ordinary and Necessary Improvements will be financed through a lease-purchase structure substantially similar to the Equipment Lease, but any lease utilized to finance Ordinary and Necessary Improvements will not contain an annual appropriation clause.

C. Procedural History

12. On January 13, 2010, the District conducted a public hearing addressing the advisability of the Project and the filing of the Petition. A notice of this public hearing, setting forth the time, place and summary of the matter in the form and content prescribed in Section 7-1306(2), Idaho Code, was published in the *Idaho Mountain Express*, a newspaper of general circulation in Blaine County, on December 23, 2009, and was posted at or near the main door of the District's Administrative Office for at least thirty days prior to the hearing. The publishing,

posting and mailing of the notice of public hearing was conducted in compliance with Idaho Code Section 7-1304. Following the January 13, 2010 hearing, on February 9, 2010, after the passage of at least fourteen (14) days, the District approved and adopted a Resolution (the "Resolution") to proceed with the filing of judicial confirmation proceedings and declaring the immediate need to construct the Ordinary and Necessary Improvements. The Resolution authorizes the District to enter into the Leases to finance the Project upon final approval of such projects by the Board and upon this Court's entry of a favorable judgment on the Petition.

13. On March 24, 2010, the Clerk of the District issued a Notice of Hearing on Petition (the "Notice") indicating that the Petition had been filed, and notifying all interested parties where to examine the Petition and Resolution and/or the time and place of the hearing on the Petition. Commencing on March 18, 2010, for a period of more than thirty (30) days, said Notice was posted in a public place of such posting in main office of the District's administrative building. The Notice was also published for three consecutive weeks on March 24, March 31, and April 7, 2010 in the *Idaho Mountain Express*, a newspaper of general circulation within the District. Such public posting and publication of said Notice was conducted in compliance with Idaho Code § 7-1306, all as more fully shown by the Affidavit of Posting, Mailing and Publishing of Notice of Public Hearing and of Posting and Publishing of Notice of Hearing on Judicial Confirmation, filed with the Court on April 1, 2010, and in the Supplemental Affidavit of Publishing of Notice of Hearing on Judicial Confirmation, filed with the Court on April 14, 2010.

14. The District filed its Memorandum in Support of Petition for Judicial Validation (the "Memorandum"), together with thirteen supporting affidavits, and one supplemental affidavit.

15. The District presented the following questions to the Court: (a) whether the District has the power and authority to enter into and execute the Property Lease Agreement, the Equipment Lease Agreement and related documents; (b) whether the District's expenditures for the Ordinary and Necessary Improvements constitute "ordinary and necessary" expenses as contemplated by the proviso clause in Article VIII, § 3 of the Idaho Constitution; and (c) whether the Property Lease Agreement, Equipment Lease Agreement and related documents, which obligate the District for an initial term corresponding to its fiscal year, and are renewable ~~and~~ ^{AS} annually only upon appropriation, budgeting and affirmative notice of intent to renew, are valid obligations under Article VIII, § 3 of the Idaho Constitution.

16. The Court held a hearing in open court on April 19, 2010, for the purpose of identifying any interested parties appearing in opposition to the Petition. Four individuals appeared at the April 19, 2010 hearing for the purpose of providing comment in open court. Each of the individuals who submitted comment at the hearing expressly declined the Court's invitation to move to dismiss or otherwise to oppose the Petition formally. No documents have been filed on behalf of any interested party seeking to answer or contest the Petition.

Conclusions of Law

1. The proceeding under the Judicial Confirmation Law, Chapter 13, Title 7, Idaho Code, is a proceeding *in rem*. Publication and posting as authorized by the Judicial Confirmation Law is a valid method of vesting jurisdiction in this Court over all interested parties and the subject matter. *Smith v. Progressive Irr. Dist.*, 28 Idaho 812, 156 P. 1133 (1916); *Knowles v. New Sweden Irr. Dist.*, 16 Idaho 235, 101 P. 87 (1908). Accordingly, this Court has subject matter jurisdiction of this matter and has jurisdiction to adjudicate this matter and validate the proceedings taken by the District pursuant to Idaho Code, Chapter 13, Title 7.

2. This action was properly instituted by the District in accordance with and pursuant to Idaho's Judicial Confirmation Law, Chapter 13, Title 7, Idaho Code.

3. This Court has made an examination of the statutes authorizing the District to take the action which is the subject matter of the Petition, the allegations of the Petition identifying potential constitutional issues raised by the action taken and proposed to be taken by the District, and the memorandum and accompanying affidavits submitted by District. There being no challenge to those statutes, or to the proposed actions of the District to proceed with the Project, and since there exists no facial constitutional infirmity that the Court is required to recognize, *sua sponte*, the statutes and actions of the District with regard to the Project are deemed constitutional.

4. There being no opposition to the factual allegations of the Petition, the allegations are taken as true. The District properly acted in pursuance of its duly authorized powers with regard to the Project.

5. Article VIII, § 3 of the Idaho Constitution provides, in pertinent part: "No county, city, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two thirds (2/3) of the qualified electors thereof voting at an election to be held for that purpose . . ."

6. The Property Lease, Equipment Lease, and related financing documents do not constitute an "indebtedness or liability" within the meaning of Article VIII, § 3 of the Idaho Constitution, exceeding the income and revenue of the District for the current fiscal year, because the District will have the right annually under the express language of each lease

agreement not to renew each lease, and therefore the District will at no time be obligated to make any payments exceeding the income and revenue provided to it for the then-current fiscal year

7. Article VIII, § 3 contains an exception, which provides “this section shall not be construed to apply to the ordinary and necessary expenses authorized by the general laws of the state.”

8. The District is authorized by Sections 33-601, 33-601A and 33-901, Idaho Code, to enter into lease and lease/purchase agreements to finance the acquisition and construction of school plant facilities and to make lease and lease/purchase payments from the proceeds of a special school plant facilities reserve fund levy.

9. The District has determined that construction of the Ordinary and Necessary Improvements is necessary now in order to repair existing District facilities, to bring the facilities into compliance with life-safety and code requirements, and to satisfy the District’s obligations under Idaho Code Section 39-8002 to ensure the safety and suitability of its facilities for students, staff, and guests of the District. *City of Boise v. Frazier*, 143 Idaho 1, 137 P.3d 388 (2006); *City of Pocatello v. Peterson*, 93 Idaho 774, 473 P.2d 644 (1970); *Asson v. City of Burley*, 105 Idaho 432, 670 P.2d 830 (1983); *Bd. of Co. Comm’rs v. Idaho Health Facilities Auth.*, 96 Idaho 498, 531 P.2d 588 (1974). Accordingly, the Ordinary and Necessary Improvements are ordinary and necessary expenses authorized by the general laws of the State of Idaho, within the “ordinary and necessary expense” exception to Article VIII, § 3 of the Idaho Constitution. As such, the expenses are not subject to Article VIII, § 3’s prohibition against incurring long-term indebtedness.

10. The District is not required by the Constitution of the State of Idaho to submit the obligations under the Property Lease, the Equipment Lease, or the Ordinary and Necessary Improvements to a vote of the electorate.

11. The findings and conclusions made herein are binding upon all persons interested in the outcome of this proceeding including but not limited to all persons or entities who received actual or constructive notice of the filing of the Petition.

DATED THIS 45 day of May, 2010.

By 
Robert J. Elgee
DISTRICT JUDGE

CLERK'S CERTIFICATE OF SERVICE

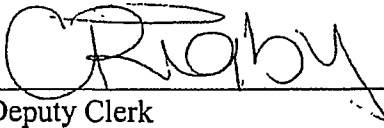
I HEREBY CERTIFY that on this 5 day of May, 2010, I caused to be served a true copy of the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW by the method indicated below, and addressed to each of the following:

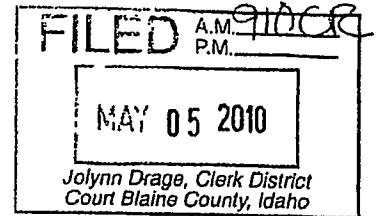
Brad P. Miller,
Nicholas G. Miller,
S.C. Danielle Quade,
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617
Telephone: 208.344.6000
Facsimile: 208.954.5240
Email: bmillar@hawleytroxell.com
nmiller@hawleytroxell.com
dquade@hawleytroxell.com

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☐ E-mail
☐ Telecopy

Clerk of the Court:

By:


Deputy Clerk



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

IN THE MATTER OF:

Case No. CV2010-170

JUDGMENT

SCHOOL DISTRICT NO. 61, BLAINE
COUNTY, IDAHO,

Petitioner.

THIS MATTER having come regularly before this Court for hearing, and counsel for Petitioner having submitted its Petition for Judicial Confirmation (the "Petition"), accompanying briefing, affidavits and exhibits in support thereof, and that proper notice of the filing of the Petition has been given as provided for in Idaho Code, Chapter 13, Title 7, and the Court having examined and considered the allegations of the Petition, all other submissions of the Petitioner, and the comments of Diane Barker, Wayne Willich, Elizabeth Schwerdtle, and Jeff Bevins made in open court on April 19, 2010, and no formal opposition to the Petition having been made, and good cause appearing therefor, the Court does ORDER, ADJUDGE AND DECREE as follows:

1. The District has complied with all procedural requirements that are conditions precedent to and necessary to authorize the District to execute and deliver the Property Lease Agreement, the Equipment Lease Agreement, and related financing documents; to construct the Ordinary and Necessary Improvements, and to otherwise proceed with the Project.

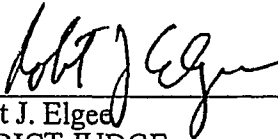
2. The District has the power and authority to enter into and execute the Property Lease Agreement, the Equipment Lease Agreement and related financing documents.

3. The Ordinary and Necessary Improvements are "ordinary and necessary expenses" authorized by the general laws of the State of Idaho within Article VIII, § 3 of the Idaho Constitution.

4. The District's authorization, execution and delivery of the Property Lease Agreement and related financing documents does not create a debt or liability under Article VIII, § 3 of the Idaho Constitution, and the Property Lease Agreement, when executed and delivered, will be legal, valid, and binding in accordance with its terms.

5. The District's authorization, execution and delivery of the Equipment Lease Agreement and related financing documents does not create a debt or liability under Article VIII, § 3 of the Idaho Constitution, and the Equipment Lease Agreement, when executed and delivered, will be legal, valid, and binding in accordance with its terms.

DATED THIS 5 day of May, 2010.

By 
Robert J. Elgee
DISTRICT JUDGE

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5 day of May, 2010, I caused to be served a true copy of the foregoing JUDGMENT by the method indicated below, and addressed to each of the following:

Brad P. Miller
Nicholas G. Miller
S.C. Danielle Quade
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617
Telephone: 208.344.6000
Facsimile: 208.954.5240
Email: bmiller@hawleytroxell.com
nmiller@hawleytroxell.com
dquade@hawleytroxell.com

☐ U.S. Mail, Postage Prepaid
☒ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy

Clerk of the Court:


By: 
Deputy Clerk

EXHIBIT E

**COPY
RECEIVED**
AUG 25 1999
Ada County Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ADA COUNTY PROPERTY OWNERS
ASSOCIATION, INC., an Idaho non-profit
corporation; JIM AULD; and ROBERT
FORREY,

Petitioners,

vs.

COUNTY OF ADA, State of Idaho;
VERNON L. BISTERFELDT, County
Commissioner; FRANK WALKER, County
Commissioner; & ROGER SIMMONS,
County Commissioner,

Respondents,

and

URBAN RENEWAL AGENCY OF
BOISE CITY, IDAHO, a/k/a CAPITOL
CITY DEVELOPMENT CORPORATION
(CCDC),

Intervenor.

Case No. CV OC 9804773D

JUDGMENT

ADA COUNTY PROPERTY OWNERS
ASSOCIATION, INC., an Idaho non-profit
corporation; JIM AULD; and ROBERT
FORREY,

Petitioners,

vs.

Case No. CV OC 99 01055

JUDGMENT

JUDGMENT - 1

COUNTY OF ADA, State of Idaho;)
 VERNON L. BISTERFELDT, County)
 Commissioner; FRANK WALKER, County)
 Commissioner; & ROGER SIMMONS,)
 County Commissioner; URBAN)
 RENEWAL AGENCY OF BOISE CITY,)
 IDAHO, a/k/a CAPITOL CITY)
 DEVELOPMENT CORPORATION)
 (CCDC); JOHN DOES A-Z; JANE DOES)
 A-Z; and LAW FIRMS A-Z,)
 Respondents.)

WHEREAS, Petitioners Ada County Property Owners Association, Inc., Jim Auld and Robert Forrey filed a Petition against Ada County and its Commissioners, seeking declaratory and injunctive relief, in Case No. CV OC 98 04773D, based upon alleged violations of Idaho constitutional and statutory provisions;

WHEREAS, CCDC filed a Motion to Intervene in Case No. 98 04773D, and the Ada County Respondents filed a Motion to Consolidate the above-entitled matters and both motions were granted;

WHEREAS, Respondents moved to dismiss Case No. CV OC 98 04773D, and Petitioners stipulated to the dismissal as reflected in the Minute Entry and Order dated April 7, 1999;

WHEREAS, Petitioners Ada County Property Owners Association, Inc., Jim Auld and Robert Forrey filed a Petition against Ada County, its Commissioners, CCDC and various

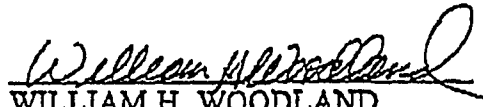
JUDGMENT - 2

unnamed parties, seeking declaratory and injunctive relief, based upon alleged violations of Idaho constitutional and statutory provisions in Case No. CV OC 99 01055; and

WHEREAS, the Respondents' Joint Motion for Judgment on the pleadings in Case No. CV OC 99 01055 was granted and the Petition was dismissed with prejudice pursuant to the Order Granting Respondents' Motion for Judgment on the Pleadings dated August 18, 1999; and for good cause shown,

IT IS ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of the Respondents and against the Petitioners in Case Nos. CV OC 98 04773D and CV OC 99 01055 regarding all claims, said claims are dismissed with prejudice, and Petitioners take nothing thereby.

DATED THIS 24th day of August, 1999.


WILLIAM H. WOODLAND
District Judge

STATE OF IDAHO
COUNTY OF ADA
ss.

I, J. DAVID NAVARRO, CLERK OF THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL THIS 20 DAY OF December, 1999

J. DAVID NAVARRO, CLERK

BY 
DEPUTY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24 day of August 1999, I caused to be served a true copy of the foregoing JUDGMENT by the method indicated below, and addressed to each of the following:

Starr Kelso
Starr Kelso Law Office, Chartered
1621 North Third Street, Suite 600
P.O. Box 1312
Coeur d'Alene, ID 83816-1312

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy

Jeffery J. Ventrella
ELAM & BURKE, P.A.
702 West Idaho St., 10th Floor
P. O. Box 1539
Boise, ID 83701

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy

Theodore Argyle
Ada County Prosecutor's Office
650 Main Street
Boise, ID 83702

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy

Craig L. Meadows
Brad P. Miller
Hawley Troxell Ennis & Hawley LLP
P.O. Box 1617
Boise, ID 83701

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy

CLERK OF THE COURT

By:

Laura Flayel
DEPUTY CLERK

JUDGMENT - 4

NOV 17 1998
NOV 17 1999

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ADA COUNTY PROPERTY OWNERS
ASSOCIATION, INC., an Idaho nonprofit
corporation; JIM AULD; and ROBERT
FORREY,

Petitioners,

v.

COUNTY OF ADA; State of Idaho; VERNON
L. BISTERFELDT, County Commissioner;
FRANK WALKER, County Commissioner; and
ROGER SIMMONS, County Commissioner,

Respondents,

and

URBAN RENEWAL AGENCY OF BOISE
CITY, IDAHO, a/k/a CAPITAL CITY
DEVELOPMENT CORPORATION (CCDC),

Intervenor.

Case No. CV-OC-9804773D

ORDER

ADA COUNTY PROPERTY OWNERS
ASSOCIATION, INC., an Idaho nonprofit
corporation; JIM AULD; and ROBERT
FORREY,

Petitioners,

v.

COUNTY OF ADA; State of Idaho; VERNON
L. BISTERFELDT, County Commissioner;
FRANK WALKER, County Commissioner; and
ROGER SIMMONS, County Commissioner;
URBAN RENEWAL AGENCY OF BOISE
CITY, IDAHO, a/k/a CAPITAL CITY
DEVELOPMENT CORPORATION (CCDC);
JOHN DOES A-Z; JANE DOES A-Z; and LAW
FIRMS A-Z,

Respondents.

Case No. CV-OC-99-01055*D

ORDER

Based upon the written Stipulation between the parties and the Stipulation
placed on the record on September 28, 1999, and for good cause appearing:

IT IS HEREBY ORDERED as follows:

1. That all of Petitioners' pending motions including, without limitation,
Petitioners' Motion for Reconsideration Pursuant To I.R.C.P. 11(a)(2)(B) and Motion For
Relief From Judgment Pursuant To I.R.C.P., Rule 60(b)(1)(2)(3) and (6), filed on
September 8, 1999, are withdrawn with prejudice;

ORDER - 2

2. That Petitioners waive any and all rights to post-judgment relief or appeal of the above-captioned matters;

3. That Petitioners waive and withdraw any other challenge, legal, equitable or otherwise, to the Judgment entered August 25, 1999;

4. That Ada County and CCDC's Joint Motion For Fees And Costs, filed on September 3, 1999, is withdrawn with prejudice; and

5. That the above-captioned matters have been dismissed with prejudice pursuant to the Judgment entered on August 25, 1999, and as set forth in the Order Granting Respondents' Motion For Judgment On The Pleadings, dated August 18, 1999, and that Judgment was, in all respects, a final judgment upon which an appeal could have been taken on August 25, 1999.

DATED THIS 15 day of Nov, 1999.

William H. Woodland

WILLIAM H. WOODLAND
DISTRICT JUDGE

STATE OF IDAHO
COUNTY OF ADA
SS.

I, J. DAVID NAVARRO, CLERK OF THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL THIS 30 DAY OF December, 1999.

J. DAVID NAVARRO, CLERK

BY *Kathie Howard* DEPUTY

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15 day of Nov, 1999, I caused to be served a true copy of the foregoing ORDER by United States mail, postage prepaid, to the following:

Starr Kelso, Esq.
STARR KELSO LAW OFFICE,
CHARTERED
1621 North Third Street, Suite 600
P.O. Box 1312
Coeur d'Alene, ID 83816-1312

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James K. Dickinson, Esq.
Ada County Prosecutor's Office
Civil Division
650 Main Street
Boise, ID 83702

Craig L. Meadows, Esq.
Brad P. Miller, Esq.
HAWLEY TROXELL ENNIS
& HAWLEY LLP
P. O. Box 1617
Boise, ID 83701

Ryan Armbruster, Esq.
Jeffery J. Ventrella, Esq.
ELAM & BURKE, P.A.
702 West Idaho St., 10th Floor
P. O. Box 1539
Boise, ID 83701

Karen Floyd
Deputy Clerk

AUG 23 1999

101 103-02

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ADA COUNTY PROPERTY OWNERS)
ASSOCIATION, INC., an Idaho)
non-profit corporation, JIM)
AULD, and ROBERT FORREY,)

Petitioners,)

-vs-)

COUNTY OF ADA, State of Idaho, VERNON)
L. BISTERFELDT, County Commissioner,)
FRANK WALKER, County Commissioner,)
ROGER SIMMONS, County Commissioner,)
URBAN RENEWAL AGENCY OF BOISE)
CITY, IDAHO, a/k/a CAPITAL CITY)
DEVELOPMENT CORPORATION (CCDC),)
JOHN DOES A-Z, JANE DOES A-Z, and)
LAW FIRMS A-Z,)

Respondents.)

Cause No. CVOC 99-01055-A

ORDER GRANTING
RESPONDENTS' MOTION
FOR JUDGMENT ON THE
PLEADINGS

STATEMENT OF FACTS

This case arises out of a long series of transactions involving the Ada County
Commissioners. In 1990, Ada County entered into a lease-purchase agreement to acquire a

Cause No. CVOC 99-01055-A

ORDER GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS

Page 1

000264

piece of property in a blighted area of downtown Boise with the intent of constructing consolidated county court facilities thereon. In 1992, District Judge George Granata Jr., in an action pursuant to I.C. § 7-1301 et seq., authorized the purchase of the property for consolidated county court facilities. Some of the same petitioners in this action appeared in opposition to the Ada County petition seeking court approval. There was no appeal of Judge Granata's decision.

The property purchased by the County for its court facilities is known as the "Corridor Property" and lies within an urban renewal area over which Capital City Development Corporation ("CCDC") has jurisdiction. Ada County and CCDC entered into an agreement in 1995 in which CCDC agreed to assist the County in selecting a developer for the corridor property. Pursuant to that agreement, Ada County solicited "Requests For Proposals" ("RFP") based on certain performance criteria as well as basic goals and guidelines for the corridor project. The RFP's were solicited in an effort to select a qualified design/build team who had the expertise and resources to take the entire project from design conception to completed construction.

After receiving numerous proposals, the County, with the help of a citizens selection committee, chose five development teams who were invited to meet with the County, CCDC, and the selection committee. These teams were then asked to submit more detailed, "Phase II", proposals for consideration. Finally, the County selected the plans submitted by the Flour/Wilmore Civic Partners Group with Morrison Knudsen Corporation as the principal contractor. On April 19, 1996, the Ada County Commissioners began negotiating exclusively with the Flour/Wilmore team. The development plan for the corridor property

became known as the Courts Complex Project ("CCP") and consists of plans for a consolidated court facilities, a parking area, and parcels to be leased to private developers.

Also in 1996, Ada County submitted an advisory vote to the County electorate seeking to gauge public support for the concept of a consolidated courts facility with some private development on site to pay the construction costs. The vote showed overwhelming support for constructing consolidated court facilities without raising taxes.

Next, the County leased the corridor property to CCDC in exchange for CCDC's promise to take all of the necessary steps to construct the CCP and lease back the courthouse facilities to Ada County. CCDC executed contracts with Civic Partners of Idaho, and Morrison Knudsen for the design and construction of the Courts Complex Project. (Civic Partners of Idaho is the successor to the Flour/Wilmore Civic Partners Group.) CCDC also made the necessary arrangements to secure financing by way of bonds for the design and construction costs.

Upon completion of the project, Ada county has agreed to lease the courts complex for one year with one-year renewal options if the County elects to allocate the necessary funds. The Courts Complex Lease between Ada County and CCDC provides that the County's renewal option, if exercised every year, could last for 30 consecutive one-year terms. At the sooner of 30 one-year renewal terms or payment in full of the revenue bonds used to finance the project, the courts complex facilities can become property of Ada County. These facilities would be improvements to property already owned by the County.

Petitioners filed a complaint against the Ada County, its Commissioners, CCDC and various unnamed parties alleging that the County's actions violate various Idaho statutes and

constitutional provisions. They requested relief in the form of declaratory judgment, injunctive relief, costs and fees, and the return of attorney fees to Ada County from outside counsel the County has hired to assist at various stages of the Courts Complex Project. An earlier complaint filed by the same petitioners in this action, containing similar allegations, was dismissed by this Court after petitioners filed the instant complaint. Currently before the Court is the Respondents' Joint Motion For Judgment On The Pleadings. The matter has been briefed by the parties and oral arguments were heard on June 16, 1999 after which the Motion was taken under advisement.

STANDARD OF REVIEW

Rule 12(c) of the Idaho Rules of Civil Procedure governs motions for judgment on the pleadings. Idaho's Rule 12(c) is identical to the Federal Rule 12(c). When an Idaho rule of civil procedure is the same as its federal counterpart, federal case law is helpful in rendering decisions under the Idaho rule. *Scott v. Agricultural Products Corp.*, 102 Idaho 147, 149, 627 P.2d 326, 328 (1981).

The Rule 12(c) standard is essentially the same as the summary judgment standard under Rule 12(b)(6). *Trimble v. Engelking*, 130 Idaho 300, 939 P.2d 1379 (1997). Trial on the merits is strongly favored to judgment on the pleadings unless the movant clearly establishes that no material issue of fact remains to be resolved and that he is entitled to judgment as a matter of law. *Knepp v. Lane*, 848 F. Supp. 1217, 1219 (E.D. Penn. 1994). A motion for judgment on the pleadings should be denied unless it appears that the plaintiff

cannot prove any facts that would support his claim for relief. *Craigs, Inc. v. General Electric Capital Corp.*, 12 F.3d 686, 688 (7th Cir. 1993).

In ruling on a motion for judgment on the pleadings, a court judges the sufficiency of the complaint, or in this case the petition, accepting as true all well-pleaded factual allegations. *Gallardo v. Board of County Comm'rs. of Kearny County, Kansas*, 857 F. Supp 783, 785 (D. Kansas 1994). All reasonable inferences are drawn in favor of the party opposing the motion. *Sheppard v. Beerman*, 18 F.3d 147, 150 (2d Cir. 1994). However, legal conclusions couched as factual allegations will not be taken as true. *Kruse v. State of Hawai'i*, 857 F. Supp. 741, 749 (D. Hawai'i 1994).

There are no material fact issues in dispute in this case. While Petitioners and Respondents disagree on many matters, the basic facts and the content of the relevant written agreements are acknowledged by all sides. The essential issue raised by Petitioners' complaint and by Respondents' motion involves the legal effect of various documents. As such, that issue presents only questions of law. Since there are no disputed material facts and only legal issues remain, the present Motion For Judgment On The Pleadings is properly before the Court.

DISCUSSION

The petition, as amended, sets out thirteen (13) separate counts, several itemized prayers for relief, and various exhibits. Notwithstanding the substantial size of this document, the basic allegations can be distilled to a handful of distinct theories for relief.

Despite some obvious overlap, each of the thirteen counts will be considered separately in this order.

COUNT I - VIOLATION OF ARTICLE VIII, § 3 OF IDAHO CONSTITUTION

The first Count in the Petition alleges violation of Article VIII, § 3 of the Idaho Constitution. To the extent that Count I alleges that CCDC violated Article VIII, § 3, it is dismissed as to CCDC since that provision is not applicable to urban renewal agencies. *Boise Redevelopment Agency v. Yick Kong*, 94 Idaho 876, 499 P.2d 575 (1972).

In Count I, Petitioners allege that Ada County did not submit the CCP for approval by two-thirds of the electorate as required by Article VIII, § 3. It further alleges the CCP is not "ordinary and necessary". Without addressing the question of Petitioners' standing to challenge the issue, the Court finds no provision in Article VIII, § 3 which requires Ada County to submit the CCP for an approval vote. Since the County was not required to submit the matter to a vote, there can be no relief for failure to do so.

Article VIII, § 3 prohibits Counties and other subdivisions of the State from incurring "any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two thirds (2/3) of the qualified electors. . .". This restriction does not apply to expenses which are "ordinary and necessary" as authorized by State law. In other words, Article VIII, § 3 requires a two-thirds vote of approval if the expense is not "ordinary and necessary" and if the liability or debt extends past one fiscal year. If the expense is either "ordinary and necessary" or can be

paid for within one year's budget, a two-thirds vote is not required.

It is undisputed that two-thirds of the Ada County voters did not specifically approve the CCP. In 1996, an advisory vote was taken which evidenced broad support for building a new courthouse without raising taxes. However, this vote was intended only to give the County Commissioners a sense of how Ada County citizens felt about going forward with the concept of a consolidated courts complex with some private development on site. As such, it does not appear the advisory vote was even intended to comply with the voting requirement of Article VIII, § 3. Article VIII, § 3 requires, a two-thirds approval vote if the expense is not "ordinary and necessary" and if it obligates the County for more than one year. A voluntary seeking of the political climate of the county on the issue of a court house facility cannot be construed as requiring compliance where no compliance is required by law.

The dispositive issue for Count I is whether Ada County has incurred an indebtedness or liability beyond the current budget year. If not, the "ordinary and necessary" issue needn't be addressed since Respondents would have to rely on that clause only if the indebtedness or liability for the CCP extends past the current year. The Court finds nothing in any of the executed agreements provided by Petitioners which obligate Ada County for more than one year. Petitioners seem concerned that Ada County has given a "wink and a nod" promise to CCDC and the Bondholders promising that they really aren't going to move out of the Courts Complex after the one-year lease. They have based their pleadings and arguments, at least in part, on this premiss. Even if such a promise existed it could not violate Article VIII, § 3 because it would be unenforceable under Idaho's Statute of Frauds. I.C. § 9-505(4). In order to constitute a debt or liability, there must be a legally enforceable

obligation against Ada County. A "wink and a nod" promise to lease the Courts Complex for thirty years could not be the basis for a cause of action since Idaho law clearly requires such agreements to be in writing.

Since Idaho law requires leases for longer than one year to be in writing, it is necessary to closely scrutinize the written agreements to determine if Ada County violated Article VIII, § 3 by obligating the general fund beyond one fiscal year without putting the matter to a vote. The allegations in Count I can only apply to the County and not CCDC, thus only the written agreements to which the County is a party are relevant.

Petitioners have cited provisions from the various agreements dealing with enforcement of County obligations and remedies if the County defaults on the contracts. They hold these provisions out as establishing liability past the current budget year. This analysis, however, misses the mark. The relevant question is what the County's obligations are and whether, on their face, they create any liability or indebtedness past the one budget year. Contrary to Petitioners' assertions, the agreements are quite clear on this point.

The critical documents petitioners have pointed to, which they suggest create indebtedness or liability for longer than one year, are the Courts Complex Lease ("CCL") and the Preliminary Official Statement ("POS") which relates to the sale of revenue bonds for the Project.

Before looking at the relevant documents, two clarifications must be made. First, Petitioners urge a broad interpretation of Article VII, § 3's concept of "liability". They have argued that Ada County has incurred liability by agreeing to indemnification provisions in the CCL. This is not the kind of liability Article VII, § 3 prohibits. If "liability" were

construed so broadly to encompass indemnification provisions, tort liability and the like, counties would be unable to take any action without a two-thirds vote of the electorate. Further, the indemnification provision set out in Petitioners' brief does not, on its face, create a debt or liability exceeding County funds for one fiscal year. The damage contemplated by this provision may never occur and, if it does, the County coffers may have sufficient funds to cover the costs. The suggested scenarios spun by the Petitioners which may occur and, if they do, may obligate the County beyond the year's budget do not constitute a debt or liability for more than one year in violation of Article VIII, § 3.

Second, Petitioners have argued that even if the County is not legally obligated to continue to lease the new court facilities, they have an equitable obligation to stay and protect the County's equitable interest in receiving the facilities at the end of 30 consecutive one-year terms. This proposition is not supported in Idaho law and does not constitute a debt or liability contemplated by Article VIII, § 3.

The document with primary relevance to Ada County's contractual obligations respecting the CCP is the lease itself. Throughout the Courts Complex Lease it is very clear that Ada County is only obligated to lease the courts complex for one year. All other covenants and obligations in the CCL are subject to Ada County's commitment to only lease the complex for one year.

Article I: "Lease Term" means the period beginning on the effective date of this Lease Agreement and ending on September 30, 2000, constituting the Initial Lease Term, and subject to the provisions of this Lease Agreement, any Renewal Terms, no one of which shall exceed one County fiscal year in length.

Section 2.2(g): Subject to the County's determination to

annually renew this Lease pursuant to Section 5.1 hereof, the County will duly and punctually pay the amounts and satisfy its obligations required under this Lease Agreement, recognizing time is of the essence.

Section 5.1(b): The County may, solely at its option, and when and if it duly budgets and appropriates funds therefor from revenues legally available to it for the ensuing fiscal year, renew this Lease for additional Renewal Terms.

Petitioners have also argued that Ada County's covenant to not take action affecting the tax status of the revenue bonds obligates the County to remain in the courts complex for the entire thirty years. However, the tax covenant provision in the CCL and the plain language of the POS are diametrically opposed to this position.

Section 4.10(Courts Complex Lease): The County covenants for the benefit of the Bondholders and the Agency that during the Lease Term, it will not take any action or omit to take any action with respect to the Bonds, the proceeds thereof, any other funds of the County or any Facilities financed or refinanced with the proceeds of the Bonds if such action or omission (i) would cause the interest on the Bonds to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Code, (ii) would cause the Bonds to become "specified private activity bonds" within the meaning of Section 57(a)(5)(C) of the Code, or (iii) would cause interest of the Series 1999 Bonds to lose its exclusion from Idaho taxable income under present Idaho law. The foregoing covenant shall remain in full force and effect notwithstanding the payment in full or defeasance of the Bonds until the date on which all obligations of the County and the Agency in fulfilling the above covenant under the Code have been met.

Preliminary Official Statement p.2: In the Courts Complex Lease Agreement, the County is obligated to pay the Lease Payments only to the extent that funds for the Lease Payments are budgeted and appropriated each year by the County. The County may terminate the Courts Complex Lease Agreement in any year without penalty if the County determines to not budget for and not appropriate funds for the Lease Payments (an "Event

of Nonappropriation"). To the extent funds are budgeted, the County will make Lease Payments at least five days prior to the February 15 and August 15 payment dates on the Series 1999 Bonds.

The language of these provisions is unambiguous. In the CCL, Ada County covenants not to take action which would interfere with the tax status of the bonds only during the one-year lease term. If the County decides to exercise its non-appropriation right, the tax covenant in section 4.10 of the CCL is of no effect since the lease term will have expired. The POS clearly releases the County from any liability to the bondholders in the event of nonappropriation. No investor could reasonably rely on the fact that Ada County will ensure the bonds retain their favorable tax status past the one-year lease term.

Petitioners have not revealed, nor has the Court found an obligation on the part of Ada County which extends past one fiscal year. Whether the County intends, and ultimately does, remain in the new courts complex for 30 years or 100 years is irrelevant. Nothing in any of the agreements entered into by the County constitutes a liability or indebtedness for more than one year. This being the case, the "ordinary and necessary" issue need not be addressed. Since the County's obligations do not exceed the budget for one year, the matter need not be approved by two-thirds of the Ada County electorate.

The content of the relevant agreements is not disputed and the law is clear. Petitioners could prove no set of facts which would entitle them to relief under Count I. Respondents are, therefore, entitled to judgment as a matter of law on that Count.

COUNT II - VIOLATION OF ARTICLE VIII, § 4 OF IDAHO CONSTITUTION

Petitioners' second cause of action alleges that Ada County lent its faith or credit to CCDC in violation of Article VIII, § 4 of the Idaho Constitution. To the extent that Count II alleges that CCDC violated Article VIII, § 4, it is dismissed as to CCDC since that provision is not applicable to urban renewal agencies. *Boise Redevelopment Agency v. Yick Kong*, 94 Idaho 876, 499 P.2d 575, (1972).

In Count II, Petitioners allege that the CCP, as outlined, amounts to an unlawful extension of Ada County's faith and credit to CCDC by allowing CCDC to sublease county property and by assigning the County's tax increment revenues from such subleases to CCDC. However, since lending faith or credit to an urban renewal agency is not prohibited by Article VIII, § 4, Petitioners are not entitled to relief even if the County's faith or credit will be lent as alleged.

Article VII, § 4 forbids counties and other subdivisions of the State from lending or pledging "the credit or faith . . . directly or indirectly, in any manner, to, or in aid of any individual, association or corporation . . ." The Idaho Supreme Court has clarified the meaning of "individual, association or corporation" to mean only private enterprises and not urban renewal agencies. *Boise Redevelopment Agency v. Yick Kong*, 94 Idaho 876, 499 P.2d 575 (1972).

It is interesting to note that Respondent CCDC is the very urban renewal agency who the Supreme Court held to be a public enterprise for purposes of Article VIII, § 4 in the *Boise Redevelopment* decision. This Court can only follow the Idaho Supreme Court by holding that lending of faith or credit to CCDC still does not violate Article VIII, § 4. Since

Petitioners could prove no set of facts which would entitle them to relief under Count II, Respondents are entitled to judgment as a matter of law on that Count.

COUNT III - VIOLATION OF ARTICLE VIII, § 4 OF IDAHO CONSTITUTION

Count III also deals with Article VIII, § 4 but alleges different facts constituting an unlawful extension of faith or credit. For the reasons set forth in the discussion of Count II, Respondents are entitled to judgment as a matter of law on Count III.

COUNT IV - VIOLATION OF ARTICLE VIII, § 1 OF IDAHO CONSTITUTION

The fourth Count in the Petition challenges the CCP on the basis of Article VIII, § 1 of the Idaho Constitution. The challenge is that Ada County's proposed assignment of tax increment revenues for longer than 20 years is unconstitutional. Since none of the agreements surrounding the CCP can reasonably be construed as Legislative action, Count IV must fail.

Article VIII, § 1 prohibits the Legislature from creating any debt, except in limited emergency situations, which will not be paid within twenty years of incurring the debt.

Article VIII, § 1 on its face applies only to the Legislature. While the Ada County Commissioners are located in the same city as the state Legislature, Ada County is not an appendage of the Legislature and has no authority to act for the it. CCDC is a legislatively-created entity but does not have authority to act on behalf of the Legislature either. Further, Petitioners have not alleged that the any Legislative action is at work which caused CCDC and Ada County to enter into an agreement to assign the tax revenues for longer than twenty

years. Even if the assignment of future tax increment revenues constitutes a "debt" for purposes of Article VIII, § 1, the proposed assignment of revenues between CCDC and Ada County does not constitute legislative action. Since the prohibition in Article VIII, § 1 is on debt "created" by the Legislature, no agreement between CCDC and Ada County regarding tax increment revenues can violate that constitutional provision. Respondents are entitled to judgment as a matter of law on Count IV.

COUNT V - FAILURE TO BID THE COURTS COMPLEX PROJECT

Count V of the Petition alleges violation of Idaho's statutory bid provisions; namely I.C. §§ 31-1001, 31-1003, 31-1004. Petitioners argue that Respondents are required by law to competitively bid a project like the CCP. Without addressing the issue of whether Petitioners' claim is timely, the Court finds that design/build projects like the CCP are not required to be competitively bid under Idaho law.

Idaho Code § 31-1001 is applicable to Counties and mandates the construction of a courthouse, jail, and other necessary public buildings. Prior to awarding a construction contract, 30 days' notice for proposals must be given. On the expiration of the 30 days, the contract is to be given to the lowest responsible bidder who will give security for completing the contract. This process is fairly straightforward and compliance can easily be verified.

However, a subsequent clause in the same statute says:

[N]o part of the provisions of this section shall be construed to prevent the board of county commissioners from entering into a lease for courthouse premises, rooms and jail for any period in their discretion, not to exceed thirty (30) years, and provided that the county commissioners may contract with responsible

parties for the leasing of a courthouse, jail and hospital, or a combination of courthouse, jail and hospital, or fairground buildings and facilities, to be constructed upon premises owned by the county or otherwise, provided that said contract shall be let subject to the provisions of chapter 40 of this title....

The CCP is the exact type of transaction contemplated by the above-cited passage.

Therefore, the award of the CCP contract is governed by Idaho Code Title 31, Chapter 40.

Chapter 40 expressly applies to counties but "shall be subject to the provisions of any specific statute pertaining to the letting of any contract or the purchase or acquisition of any commodity or thing by any county by soliciting and receiving competitive bids therefor, and shall not be construed as modifying or amending the provisions of any such statute...."

Idaho Code § 31-4001. The provisions of Chapter 40 are default rules. In other words, all statutes specifically authorizing a particular method of contracting trump the provisions of Chapter 40. If no "specific statute pertaining to the letting of any contract" exists, however, the default provisions of Chapter 40 must be followed as outlined below:

- * County expenditures over \$25,000 must be contracted for and let to the lowest bidder. In the event of a tie, preference should be given to the local bidder. I.C. §§ 31-4002, 4003.
- * Notice inviting bids must be given at least thirty days prior to the date of opening the bids. Notice must be published at least twice in the local newspaper not less than 3 weeks apart. The county must make available to all interested bidders the bid forms, instructions, and other documents and specifications when applicable. I.C. § 31-4004.
- * Bids are to be sealed and must include bid security. I.C. § 31-4005.
- * Bids are to be opened at a public meeting on the date set forth in the original notice inviting bids. If a contract is awarded it must be done within 30 days of the date of the bid opening. I.C. § 31-4006.

If no other statutory provision for a CCP-type project existed, Ada County would be

bound to the bid provisions outlined above. In Title 67, Chapter 23, however, there is a specific statute authorizing the design/build contracting method for counties interested in constructing public buildings. Since this statute specifically applies, it trumps the default competitive bidding provisions of Title 31, Chapter 40.

I.C. § 67-2309 provides for the design/build method of contracting and requires counties to make written project plans and specifications available to all interested and prospective bidders. This section not only authorizes the design/build method, it defines design/build as well:

For purposes of this section, a design-build contract is a contract between a public entity and a nongovernmental party in which the nongovernmental party contracting with the public entity agrees to both design and build a structure, roadway or other item specified in the contract.

While I.C. § 67-2309 clearly authorizes the design/build method, it does not precisely outline the procedure for awarding a design/build contract. This procedure is clarified in *Dana v. Board of Commissioners of Canyon County*, 124 Idaho 794, 864 P.2d 632 (Ct. App. 1993).

The *Dana* decision clearly contemplates counties issuing requests for proposals ("RFP's") for design/build projects and choosing a design/build team based on an evaluation of the proposals received, not on the basis of the lowest bid. If the county receives a proposal which suits its needs, it chooses that design/build team who submit the successful proposal to complete the project. The contract is awarded on the basis of the RFP's, not based on who gave the lowest bid. As the *Dana* court pointed out, design/build projects have many other factors to consider other than cost alone.

Canyon County, in *Dana*, ultimately abandoned the design/build method when it became apparent that the construction arm of the design/build team did not have the requisite public works license for the project. They then hired the design arm of the team and, when the designs were complete, let the bare construction out for competitive bid. However, the *Dana* court made the distinction between strict competitive bid situations and turn-key type design/build projects, implicitly sanctioning both.

The Ada County Courts Complex Project is contemplated as the construction of a Courthouse on county property by a private party with the county leasing the facilities for no more than 30 years. This would make the project subject to the competitive bid requirements of Title 31, Chapter 40. However, Ada County chose a design/build method for the project pursuant to I.C. § 67-2309. This section, combined with the direction of the *Dana* decision, requires the county to make available project plans to all interested prospective bidders. The County was authorized to advertise for RFP's rather than hard bids since the exact specifications for the Courts Complex Project were unknown. Upon receipt of the RFP's, the County could evaluate the proposals and choose the one which met all the objectives and suited the County best. Once an RFP was approved, the County was free to contract with the party who submitted the chosen RFP.

According to the petition in this case, Ada County solicited "expressions of interest" in 1995. Sixty-one RFP's were received by the county in response to this solicitation. The County, through a citizens selection committee, chose five or six of the of the sixty-one RFP's and asked the submitting parties to submit further information. On April 19, 1996,

the County selected the Flour/Wilmore Civic Partners team and began contract negotiations. See *Petition* pp. 9-11.

Petitioners do not allege that Ada County failed to advertise for RFP's. Nor do they allege that Ada County withheld project information from a prospective bidder. The only allegation with respect to the bidding is that "neither Ada County nor CCDC let the construction of Courts Complex for bids in violation of Idaho Code §§ 31-1001, 31-4003, 31-4004." *Petition* p.56. Based on I.C. § 67-2309 and the *Dana* decision, a design/build contract such as the one for the Ada County Courts Complex Project does not need to be competitively bid. While Petitioners have implicitly tried to undermine I.C. § 67-2309, noting it is contained in the "miscellaneous provisions" of the Idaho Code, this fact is irrelevant since the competitive bid provisions of Title 31, Chapter 40 specifically defer to any other statutory provision concerning letting contracts. Petitioners' allegations regarding the competitive bidding process, taken as true, could not be the basis for relief under any set of facts. Respondents are entitled to judgment as a matter of law on Count V.

COUNT VI - VIOLATION OF ARTICLE XII, § 4 OF IDAHO CONSTITUTION

In Count VI, Petitioners allege that Ada County violated Article XII, § 4 of the Idaho Constitution by leasing part of the corridor property to CCDC for the purpose of subleasing some of the parcels to private developers. To the extent Count VI makes allegations against CCDC, it is dismissed as to CCDC since Article XII, § 4 applies only to cities, towns, counties and other municipal corporations, not to urban renewal agencies. *Boise*

Redevelopment Agency v. Yick Kong, 94 Idaho 876, 499 P.2d 575 (1972).

The portion of Article XII, § 4 which Petitioners have cited in Count VI forbids counties, towns, cities, or other municipal corporations from "rais[ing] money for, or make[ing] donations or loan[ing] its credit to, or in aid of, any company or association" Petitioners are claiming that by allowing private development on County property represents the loan of County credit to developers or the raising of money by Ada County for the developers. This proposition is unsupported by Idaho law.

Counties may lease county property to private entities without violating the Idaho Constitution. This authority includes the right to spend county funds to improve the property to make it suitable for the lessee. *Hansen v. Kootenai County Board of County Comm'rs.*, 93 Idaho 655, 471 P.2d 42 (1970). In no way does such an expenditure violate Article XII, § 4 of the Idaho Constitution.

Ada County is acting within its constitutional authority by allowing parcels of the CCP property to be privately developed. Not only will the value and utility of the property be improved as a result of the development, but the County will also receive a benefit from the lease revenues resulting from the private development. The more revenue the private leases generates, the less money the County has to pay under the CCL. These facts are not disputed. Respondents are entitled to judgment as a matter of law on Count VI.

COUNT VII - VIOLATION OF ARTICLE VIII, §§ 3, 4 OF IDAHO CONSTITUTION

Count VII sets out different facts but alleges violation of constitutional provisions

already discussed. Any "indebtedness" or "liability" incurred by Ada County by signing the CCL is only in effect during the twelve month lease term. For the reasons set forth in the discussion of Counts I and II, all Respondents are entitled to judgment as a matter of law on Count VII.

COUNT VIII - VIOLATION OF ARTICLE VIII, § 3 OF IDAHO CONSTITUTION

Count VIII sets out different facts but alleges violation of Article VIII, § 3 which has already been discussed. All of the covenants made by Ada County in the CCL are enforceable only during the twelve month term of the Lease unless the County elects to renew the Lease. For the reasons set forth in the discussion of Count I, all Respondents are entitled to judgment as a matter of law on Count VIII.

COUNT IX - INJUNCTION

The ninth cause of action calls for an injunction against Ada County prohibiting it from continuing with the CCP until and unless two-thirds (2/3) of the qualified voters of Ada County approve. This request is premised on the Court ruling in favor of Petitioners on any of the first eight Counts. Since the Court has ruled in favor of Respondents on all Counts, Petitioners' request for injunction is denied.

COUNT X - ATTORNEY FEES TO PETITIONERS

Count X asks for an award of attorney fees to Petitioners under the "private attorney general" doctrine. Petitioners allege this litigation seeks to enforce fundamental rights of Ada

County voters. Since this order dismisses the entire Petition and grants none of the requested relief, the Court can not award attorney fees to Petitioners under the "private attorney general doctrine" or any other theory. Petitioners request is denied.

COUNT XI - ATTORNEY FEES PAID BY COUNTY TO OUTSIDE COUNSEL

Count XI requests an order requiring the return to Ada County's general fund "all outside counsel fees paid to outside counsel" by Ada County. As set forth in the Court's Order Denying Motion To Disqualify Counsel dated June 10, 1999, Ada County may hire outside counsel from time to time as it deems appropriate. Since there was nothing illegal or improper in Ada County's hiring of outside counsel in conjunction with the CCP or this litigation, Petitioners' request for the return of attorney fees contained in Count XI is denied.

COUNT XII - ADOPTION OF A "COMMERCIAL REASONABLENESS" STANDARD

Petitioners' twelfth cause of action alleges violation of statutory and constitutional duties by Ada County by adopting the reasonableness standards of a commercial developer in relation to the CCP. In their brief opposing the present Motion, Petitioners clarify these allegations by pointing to a provision in the Master Development Agreement requiring the County to comply with the reasonableness standards of private sector landlords or developers. *See Master Development Agreement § 908.* These allegations can not give rise to a cause of action since Ada County could have conveyed the corridor property outright to CCDC with no strings attached. The fact that the County kept some control over the

property and agreed to adopt a reasonableness standard bases on private sector norms can not give rise to a statutory or constitutional violation.

Counties have broad statutory authority to deal with urban renewal agencies in order to facilitate urban renewal plans. This authority includes making all the necessary agreements to facilitate a urban renewal plan as well as conveying, even without consideration, real property to the urban renewal agency.

(a) For purposes of aiding in the planning, undertaking, or carrying out of an urban renewal project and related activities authorized by this act, any public body may, upon such terms, with or without consideration, as it may determine: (1) dedicate, sell, convey or lease any of its interest in any property or grant easements, licenses or other right or privileges therein to an urban renewal agency; (2) incur the entire expense of any public improvements made by such public body in exercising the powers granted in this section; (3) do any and all things necessary to aid or cooperate in the planning or carrying out of an urban renewal plan and related activities. . .

(b) Any sale, conveyance, lease or agreement provided for in this section may be made by a public body without appraisal, public notice, advertisement or public bidding.

I.C. § 50-2015.

Count XII asserts that Respondents entered into the Master Development Agreement and unconstitutionally agreed to a "commercial reasonableness" standard. As the above-cited code provision clearly authorizes, the County could have deeded the corridor property to CCDC outright and let CCDC handle all of the details of the urban renewal plan. It is difficult to comprehend that the County violated Idaho law by, merely leasing the property and agreeing with CCDC to cooperate in a commercially reasonable manner. If the Ada

County had authority to convey the property without consideration and thus have no say in how it is developed, it also had authority to lease the property and agree to reasonably cooperate with CCDC in the development of the property. As subsection (3) of I.C. § 50-2015 makes clear, Ada County may "do any and all things necessary to aid or cooperate" with CCDC in furtherance of the urban renewal plan of which the corridor property is part.

Petitioners notion that counties may not agree to cooperate based on commercially reasonable standards is not supported in Idaho law. Respondents are entitled to judgment as a matter of law on Count XII.

COUNT XIII - VIOLATION OF I.C. § 50-2015(C)

In the thirteenth and final count, Petitioners cite part of subsection (c) of Idaho Code § 50-2015 and allege that Ada County and CCDC violated it in adopting various resolutions relating to the CCP. Specifically, Petitioners allege that a loan or credit has passed from Ada County to CCDC. The Court has reviewed all of the lengthy documents relevant to this case and finds no extension of credit or a loan from Ada County to CCDC. Count XIII must, therefore, be dismissed.

Petitioners claim that resolutions 968 and 998 by Ada County and resolution 781 by CCDC, as well as the County's cooperation regarding the Bond Purchase Contract violate I.C. § 50-2015(c) which reads in part:

Provided, that nothing contained in this section shall be construed as authorizing a municipality to give credit or make loans to an urban renewal agency.

Even if this provision were the sole authority on the matter, none of the resolutions or the

agreements to which Ada County is a party represent a loan or extension of credit to CCDC.

As noted in the discussion of Count XII, I.C. § 50-2015 confers broad authority on counties in facilitating urban renewal plans. A county may deed property to an urban renewal agency, pay all improvement and development costs, and completely finance the project. *See* I.C. § 50-2015(a). These activities do not amount to an extension of credit or a loan to the urban renewal agency as prohibited in the last clause of subsection (c).

In this case, Ada County and CCDC agreed that CCDC would be in responsible for procuring financing for the CCP. Ada County leased the corridor property to CCDC and agreed to lease back the courts complex for one year. The County, in accordance with the agreements with CCDC, then directed CCDC to secure bond financing for the project. None of these actions constitute a loan to CCDC nor an extension of credit. The County has complied with all of the relevant statutes and made arrangements for a consolidated courts facility, not for the benefit of CCDC, but for the benefit of Ada County. Nothing in the resolutions cited by Petitioners or the Bond Purchase Contract amounts to a loan or extension of credit from Ada County to CCDC. Since all of the relevant agreements are before the Court and are in writing, no set of facts could be proven which would entitle Petitioners to relief under Count XIII. Respondents are entitled to judgment as a matter of law on that count.

CONCLUSION

Petitioners have failed to set out a single claim for which they could be entitled to

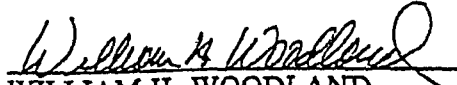
relief under Idaho law. Further, many of the thirteen causes of action are likely untimely and are claims for which Petitioners may lack standing. However, each count has been individually considered in this order.

This Court can not find a single statutory or constitutional violation in Ada County's or CCDC's conduct relating to the Courts Complex Project. While Petitioners may not like the idea of a new consolidated court facility, the Courts Complex Project as outlined in the written agreements before the Court complies with Idaho law. The relevant facts are not in dispute. Only matters of law were at issue in this Motion.

In accordance with Rule 12(c) of the Idaho Rules of Civil Procedure, Respondents are entitled to judgment on all counts as a matter of law.

IT IS HEREBY ORDERED that Respondents' Joint Motion For Judgment On The Pleadings is GRANTED and the Petition is dismissed with prejudice.

DATED August 18th, 1999.


WILLIAM H. WOODLAND
District Judge

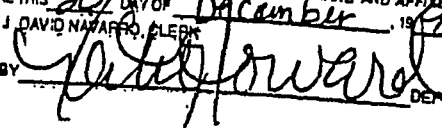
STATE OF IDAHO
COUNTY OF ADA
99
I, J. DAVID NAVARRO, CLERK OF THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN THIS DEEMED
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL THIS 20th DAY OF December, 1999
J. DAVID NAVARRO, CLERK
BY  DEPUTY

EXHIBIT F

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR
ADA COUNTY

In re:

ADA COUNTY,
a political subdivision
of the State of Idaho,

Petitioner.

Case No. 95055

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND JUDGMENT

THIS MATTER was heard on December 17, 1991, in Boise, Ada County, Idaho, with the Honorable George Granata Jr., Fifth District Judge, who was assigned this Fourth District Court case by the Idaho Supreme Court, presiding. Counsel for the Petitioner were Theodore E. Argyle, Deputy Prosecuting Attorney for Ada County, and Michael C. Moore, Attorney at Law; Pro Se parties were Don Chance, Robert Forrey and Calvin Williams, all representing the Ada County Property Owners Association, Inc. All parties presented testimony and documentary evidence. At the close of the hearing,

Findings, Conclusions
of Law & Judgment

the matter was continued pending the submission of briefs and proposed findings of fact and conclusions of law. The matter was ultimately taken under advisement on January 3, 1992. The court, being advised in the law and in the premises, now enters its Findings of Fact and Conclusions of Law, as follows:

FINDINGS OF FACT

1. The Petitioner is Ada County, Idaho, which is a political subdivision within the definition contained in I.C. § 7-1301, et seq., which chapter is known as the "Judicial Confirmation Law," seeking judicial confirmation as to the validity of a certain lease financing agreement between the Petitioner and the Friends of the Ada County Judicial System, Inc., an Idaho non-profit corporation (hereinafter "Friends").

2. Pursuant to I.C. § § 7-1305 and 7-1306, notice of the filing of the Petition for Judicial Confirmation was served by publication once a week for five (5) consecutive weeks by five (5) weekly insertions in The Idaho Statesman, a newspaper of general circulation within Ada County, Idaho, on October 30, November 6, November 13, November 20 and November 27, 1991, as well as by the posting in a prominent place at or near the main door of the Ada County Courthouse, at least thirty (30) days prior to the date fixed in the Notice of Hearing on the Petition, as more fully set forth in the Affidavit of Publication and Proof of Posting of Notice on file in this case.

3. The Ada County Property Owners Association, Inc. (hereinafter "Respondent") has filed a written answer in this case, in which the Respondent contests the validity of the Lease Agreement described hereinafter, for the reasons set forth in Finding of Fact No. 11 below.

4. The Petitioner is authorized and required by law to provide suitable office space and facilities for the various county departments and for the judicial and criminal justice systems, including, but not limited to, courtroom and office facilities for the District Court, including the Magistrate Division thereof, the prosecuting attorney's office and the public defender's office. The Petitioner now provides, and has for many years provided, pursuant to the authority and mandate of I.C. § § 1-1613, 1-2217, 31-604, 31-807, 31-1001, office space for above-mentioned governmental purposes. In 1990, the Petitioner, through its Board of Commissioners, i.e., the Ada County Commissioners (hereinafter "Board"), determined that the existing office facilities for such governmental purposes were inadequate and that additional office space was needed. In order to meet these needs, the Board took the actions described hereinafter.

5. On or about July 1, 1990, the Petitioner entered into a lease of a building known as the "Eagles Building," located at 6th and Idaho Streets in Boise, Ada County, Idaho, near the existing county offices, which building is hereinafter referred to as "the Property." Simultaneously with the execution of this

lease, the Petitioner entered into an Option to Purchase the Property, dated June 29, 1990.

6. On October 1, 1990, at the commencement of the Petitioner's 1990-1991 fiscal year, the Petitioner exercised its Option to Purchase the Property by giving notice to the seller of the Property of its exercise of such Option to Purchase.

7. On or about November 15, 1990, the Petitioner entered into a lease-purchase financing agreement with Friends, which transaction consisted, in principal part, of the following:

- A. The Board, on November 15, 1990, adopted a Resolution making findings as to the need for additional office space and approving a financing transaction with Friends.
- B. The Petitioner assigned to Friends, by Assignment of Option dated on or about November 16, 1990, the Option to Purchase the Property.
- C. In order to finance the purchase of the Property, Friends issued its Promissory Note, dated November 16, 1990, in the principal amount of \$1,200,000 to West One Bank, Idaho, N.A., secured by a deed of trust on the Property, and further secured by an Assignment of Rents to be received on the Property.
- D. The Petitioner entered into a Lease Agreement (hereinafter "Lease Agreement") with Friends, dated November 15, 1990, a copy of which is attached to the Petition for Judicial Confirmation as Exhibit "A,"

whereby Friends leased the Property to the Petitioner under the following terms and conditions:

- (1) The term of the Lease Agreement was from November 16, 1990, to September 30, 1991.
- (2) The Petitioner was granted the right, solely at its option, and when and if it duly budgeted and appropriated funds therefor from revenues legally available to it for the ensuing fiscal year, to renew the Lease Agreement for additional annual renewal terms, for a total of not more than four consecutive one-year terms, commencing on October 1 and ending on the following September 30 of each renewal term.
- (3) The Petitioner was granted the right and option to purchase the Property upon payment of all outstanding encumbrances on the Property.

8. The Petitioner, pursuant to the Lease Agreement, has exercised its option to renew the Lease Agreement for an additional one-year term, commencing on October 1, 1991, and ending on September 30, 1992, by duly budgeting and appropriating sufficient funds in its 1991-1992 fiscal year budget to make the required lease payments, and by delivering to Friends a written statement certifying the same, all in accordance with Section III(B) of the Lease Agreement.

9. Although the Petitioner has exercised its right to renew the Lease Agreement for an additional one-year term, as set forth above, it has not yet made either of the semi-annual lease payments for the 1991-1992 fiscal year.

10. The Petitioner did not seek or obtain approval of two-thirds (2/3) of the electors at a special election called for the purpose of voting on any of the foregoing transactions.

11. The Respondent contends that the Lease Agreement is invalid on the following grounds:

A. It creates an indebtedness or liability exceeding the revenues of the Petitioner for the current fiscal year, for which no approval of the electors was obtained, in violation of Article 8, Section 3, of the Idaho Constitution, for the following reasons:

(1) The Petitioner, by expending funds to obtain the Option to Purchase and subsequently exercising its Option to Purchase the Property, dated June 29, 1990, incurred a binding obligation, extending beyond the revenues of the then-current fiscal year, to purchase the Property.

(2) Although called a lease, the Lease Agreement is actually a binding installment purchase contract.

B. The expenditures for the Property under the Lease Agreement are not "ordinary and necessary expenses" of the Petitioner within Article 8, Section 3, of the Idaho

Constitution, for the following reasons:

- (1) Although the expenditures are "necessary," they are not "ordinary," because they are not regularly recurring expenses of the Petitioner.
- (2) The fact that the Petitioner is mandated by law to provide the facilities in question does not make the expenses "ordinary."
- (3) The Property is a "new" acquisition, as opposed to the repair or rehabilitation of an existing facility.
- (4) The fact that the overall expenditures for the Property may be small, when compared to the Petitioner's total annual budget, is not constitutionally significant and, in fact, the Property represents a major expense to the Petitioner.
- (5) The financial transaction itself is an unusual or extraordinary method of financing the acquisition of the Property.

C. The transaction with Friends constitutes a lending of the credit of the Petitioner to Friends, in violation of Article 8, Section 3, of the Idaho Constitution and of I.C. § 31-605.

D. The Petitioner has failed to comply with the following statutes:

- (1) I.C. § 31-807, which requires three (3) appraisals for the purchase of real property.
- (2) I.C. §§ 31-1001 and 31-4001, et seq., requiring competitive bids for certain expenditures.
- (3) I.C. §§ 31-1002 and 31-1903, which provide for bond elections.
- (4) I.C. § 31-1003, dealing with the selection of a site and the letting of bids for construction following a bond election.
- (5) I.C. §§ 31-1008 and 31-1009, which provide for a county building construction fund.
- (6) I.C. § 31-1608, which provides for emergency expenditures.

12. With particular reference to the Respondent's contentions in Finding of Fact No. 11 above, the court finds, as follows:

- A. The Petitioner's expenditure of funds to obtain the Option to Purchase the Property, dated June 29, 1990, was from moneys duly budgeted and available to the Petitioner for the then-current fiscal year.
- B. The Petitioner received adequate consideration for its assignment of the Option to Purchase to Friends in the form of the Lease Agreement and the use of the Property.
- C. The loan of funds by West One Bank (hereinafter "Bank") to Friends for the purchase of the Property was not made

in reliance upon the credit of the Petitioner, but was made in reliance upon the value of the Property, in which the Bank was granted a security interest in the form of a deed of trust securing the promissory note from Friends. The Petitioner did not pledge its credit as security for the payment of the promissory note. In the event of a default upon the promissory note, the Bank has no recourse against the money, property or credit of the Petitioner.

- D. The Lease Agreement between the Petitioner and Friends was entered into on November 15, 1990. The term of the Lease Agreement was from November 16, 1990, to September 30, 1991, which coincided with the remainder of the Petitioner's then-current fiscal year. The Petitioner was granted the right, solely at its option, and when and if it duly budgets and appropriates funds therefor from revenues legally available to it for the ensuing fiscal year, to renew the Lease Agreement for up to four (4) additional annual renewal terms.
- E. The Petitioner did budget funds in its 1991-1992 fiscal year budget for the purpose of making the semi-annual lease payments coming due on February 3 and August 3, 1992, under the Lease Agreement, and has duly exercised its right and option to renew the Lease Agreement for an additional one-year term commencing on October 1, 1991,

and ending on September 30, 1992, in accordance with Section III(B) of the Lease Agreement.

- F. The Lease Agreement does not require the Petitioner to budget and appropriate funds for the ensuing fiscal years and does not require the Petitioner to levy a special tax or to increase its existing tax levy, if it does renew the Lease Agreement for additional lease terms.
- G. If the Petitioner continues to exercise its option to renew the Lease Agreement for additional annual lease terms and makes all lease payments thereunder, the Petitioner's total expenditures, pursuant to the Lease Agreement, including its initial lease payment, will be \$1,500,000. The total annual budget of the Petitioner for the 1991-1992 fiscal year is in excess of \$47,000,000.
- H. The Petitioner obtained, prior to entering into the Option to Purchase the Property and prior to entering into the Lease Agreement, three (3) independent appraisals of the Property. The purchase price under the Option to Purchase, dated June 29, 1990, did not exceed the appraised value of the Property.

Based upon the above Findings of Fact, this court now enters its Conclusions of Law, as follows:

CONCLUSIONS OF LAW

1. The proceedings under the Judicial Confirmation Law, Title 7, Chapter 13, Idaho Code, are in rem and jurisdiction of the subject matter and of all interested parties is lawfully obtained through publication and posting, as provided therein. The publication and posting, as authorized by the Judicial Confirmation Law, is a valid method of vesting jurisdiction in this court over all interested parties and over the subject matter.

2. This court has obtained jurisdiction over the subject matter of the Petition for Judicial Confirmation, as well as over all interested parties in this case, as a matter of law, by publication and posting, as provided by law.

3. The allegations of the Petition for Judicial Confirmation are deemed to be admitted by all interested parties who failed to appear in objection thereto. This court is authorized to render the judgment, as prayed for in the Petition for Judicial Confirmation, as set forth hereinafter.

4. Article 8, Section 3, of the Idaho Constitution, provides, in pertinent part, as follows:

No county, city, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two thirds (2/3) of the qualified electors thereof voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provisions shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to

constitute a sinking fund for the payment of the principal thereof, within thirty (30) years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void: Provided, that this section shall not be construed to apply to the ordinary and necessary expenses authorized by the general laws of the state

5. The Petitioner, by entering into the Option to Purchase the Property, dated June 29, 1990, incurred no binding obligation and, therefore, no indebtedness or liability extending beyond its then-current fiscal year. The Petitioner assigned all of its rights under the Option to Purchase to Friends on or about November 16, 1990, and, thereafter, had no further rights or duties thereunder.

6. The Lease Agreement, dated November 15, 1990, between the Petitioner and Friends, does not constitute an indebtedness or liability of the Petitioner exceeding the income and revenue provided for the current fiscal year within the meaning of Article 8, Section 3, Idaho Constitution, for the following reasons:

A. The Lease Agreement contains, at Section III(B), the following provision:

B. Renewal. Lessee may, solely at its option, and when and if it duly budgets and appropriates funds therefor from revenues legally available to it for the ensuing fiscal year, renew this Lease for additional annual renewal terms. Each annual renewal of this Lease shall be deemed to be exercised by Lessee upon the adoption, by September 15 of any year, of a budget for the ensuing fiscal year, duly budgeting and appropriating the amount of money required to make the Lease payment and all

other payments payable by Lessee under the Lease. Within ten (10) days following the adoption of a budget duly budgeting and appropriating said funds for the ensuing year, Lessee shall deliver to Lessor a written statement of Lessee certifying that it has duly budgeted and appropriated said funds for the ensuing year, which written statement shall be accompanied by a copy of the budget so adopted and a certified copy of the resolution or other official action of the Board adopting said budget and appropriating said funds. The due appropriation of funds as aforesaid shall constitute a valid and enforceable obligation of Lessee for the payment of such funds for the purposes provided herein, and shall not be subject to abatement for any cause. Each renewal term shall commence on October 1 of the fiscal year following adoption of the budget as provided hereinabove and shall terminate on September 30 of the following calendar year.

- B. Under the foregoing clause, the sole obligation of the Petitioner is to make the semi-annual lease payments during the Petitioner's 1991-1992 fiscal year. The Petitioner has duly budgeted and appropriated, from legally available revenues duly provided to it for such fiscal year, sufficient funds for such purpose.
- C. The only means by which the Petitioner could become indebted or liable for any payments beyond the moneys provided to it for the current fiscal year would be by exercising its option to renew for an additional term (or by electing to prepay as provided in the Lease Agreement), after first duly budgeting and appropriating the amounts of such lease payments for the ensuing fiscal year.

D. Should the Petitioner fail or refuse, for any reason, to budget and appropriate funds for any such renewal term, the Petitioner will incur no further obligation or liability for payment of any kind.

E. Therefore the Petitioner has incurred no "indebtedness or liability" within the meaning of Article 8, Section 3, of the Idaho Constitution.

7. Even had the Petitioner chosen to enter into an obligation for the Property binding the Petitioner beyond the then-current fiscal year, such obligation would not constitute an indebtedness or liability prohibited by Article 8, Section 3, of the Idaho Constitution because such obligation would constitute an "ordinary and necessary expense" of the Petitioner for which no approving vote of the electors is required within the meaning of Article 8, Section 3, of the Idaho Constitution, for the following reasons:

A. The Petitioner is authorized, required and mandated by the laws of the state of Idaho to provide the facilities for which the Property is being utilized.

B. The Petitioner, which has for many years provided such facilities, now finds its existing facilities inadequate to meet its current needs and has determined that the Property is indispensable to the efficiency of its continued operations.

C. The expenditures, though not of a regularly recurring nature, are for the purpose of replacing outmoded and unserviceable existing facilities of the Petitioner in order for it to continue to provide necessary public services, as opposed to the acquisition of wholly new facilities for an entirely new purpose.

D. The purpose for which the expenditures are to be made are ordinary and necessary expenses of the Petitioner. Whether the method of financing the cost of providing the Property is of an unusual nature has no bearing on whether the expenditures themselves are ordinary and necessary within the meaning of Article 8, Section 3, of the Idaho Constitution.

E. The cost of providing the Property, including its initial lease payment, lease payments to be made during the 1991-1992 fiscal year and all lease payments which the Petitioner may make in future fiscal years, is not disproportionate to the Petitioner's overall budget.

8. The Petitioner has not loaned the credit of the county in a manner which is in violation of Article 8, Section 4, of the Idaho Constitution or in violation of I.C. § 31-605.

9. The Petitioner obtained three (3) independent appraisals of the Property prior to entering into the Option to Purchase the Property, dated June 29, 1990, and the purchase price does not exceed the appraised value of the Property. Therefore the

Petitioner has not violated I.C. § 31-807.

10. I.C. §§ 31-1001 and 31-4001, et seq., are not applicable to the purchase of existing real property.

11. I.C. §§ 31-1002, 31-1003 and 31-1903 are applicable only where a board of county commissioners deems it for the public good to bond the county for the purposes described in such statutes and are not applicable where, as in the case at bar, the Board chooses to utilize some other financing method. Article 8, Section 3, of the Idaho Constitution and I.C. §§ 31-1002, 31-1003 and 31-1903 do not require an approving vote of the electors: (a) to determine the location, situs or type of building to be constructed or (b) to approve a particular financing method not involving the issuance of bonds or the incurring of indebtedness or liability beyond the current year's revenues. Approval of the electors is required only for the incurrence of indebtedness or liability beyond the current year's revenues and only if such indebtedness or liability is not an ordinary and necessary expense within the meaning of Article 8, Section 3, of the Idaho Constitution.

12. I.C. §§ 31-1008 and 31-1009 provide a method by which a county may, with the approval of two-thirds (2/3) of the electors voting at an election thereon, levy a special tax for the purpose of accumulating funds in a County Building Construction Fund. These statutes are not, however, mandatory and apply only where a board of county commissioners has first determined that the best interests of the county require the creation of such a

fund. These statutes do not preclude the use of any other lawful financing method by a board of county commissioners. The Petitioner has not violated the provisions of I.C. § § 31-1008 and 31-1009.

13. I.C. § 31-1608, which provides a method by which a county may make certain emergency expenditures, is not applicable to the case at bar.

Based upon the above Findings of Fact and Conclusions of Law, this court enters Judgment, as follows:

NOW, THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The Lease Agreement between the Petitioner, as lessee, and Friends, as lessor, dated November 15, 1990, is valid, in accordance with its terms.

2. The Petitioner was, at the time of entering into this Lease Agreement, authorized to enter into such agreement and is authorized, subject to the annual budgeting and appropriation of funds therefor, in accordance with law, to exercise its right thereunder to renew such Lease Agreement from year to year, in accordance with the terms of the agreement.

3. The Petitioner is authorized to make lease payments, in accordance with the Lease Agreement, from moneys duly budgeted and appropriated for such purpose.

DATED this 23rd day of January, 1992.


GEORGE GRANATA JR.
District Judge

Findings, Conclusions
of Law & Judgment

PC: Theodore E. Argyle, Deputy Prosecuting Attorney
Michael C. Moore, Attorney at Law
Don Chance
Robert Forrey
Calvin Williams

EXHIBIT G

NO. 60-C
FILED
A.M. _____ P.M. 1:39

AUG 26 2002

THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA
BY DAVID NAVARRO, Clerk
DEPUTY

IN THE MATTER OF:

CITY OF BOISE,

PETITIONER,

Case No. CVOC0202395D

DECISION DENYING PETITION

On March 28, 2002, pursuant to *Idaho Code* §7-1304, the City of Boise ("Boise") petitioned the Court for a judicial examination and determination of the validity and authority for Boise to enter into a Lease and Trust Agreement and related financing documents for the construction of and lease of a new police facility to be located on Fairview Avenue. The proposed project also includes renovating the existing Barrister facility. Boise resident David Frazier, *pro se*, answered in opposition on April 24, 2002, and Boise resident Robert Auld (represented by counsel) answered in opposition on May 13, 2002. A public hearing was held on May 15, 2002. Several other Boise residents, Gene Summa, Nicole Fornshell and Aimee Robbins, appeared in opposition to the Petition at the hearing but filed no answer. The Court set a briefing schedule.

Oral argument was held on July 8, 2002, and the Court ordered the parties to file proposed findings of fact and conclusions of law by August 19, 2002. Boise and Respondents Frazier and Auld submitted proposed findings of fact and conclusions of law on August 19, 2002, and the Court took the matter under advisement.

For the reasons stated below, the Court denies the Petition. The Court finds that construction of the Boise Police Department Fairview facility does not constitute an "ordinary and necessary" expense, and further finds that its proposed financing arrangement (denominated a "lease" by Boise) would create a liability exceeding Boise's

DECISION DENYING PETITION
CASE NO. CVOC 0202395D

1 income and revenue provided for it for each year in violation of the Idaho Constitution.¹
2 Thus, this expenditure must be approved by Boise voters.

3 BACKGROUND

4 Among those powers most jealously guarded by the people is the power of local
5 government to incur debt and to expend money on its residents' behalf. Therefore, the
6 framers at Idaho's constitutional convention decided to severely limit local government
7 authority to incur debt in Article VIII, §3 of the Idaho Constitution. From the beginning,
8 local governments have tested its limits, developing many schemes designed to avoid
9 the consequences of this article. Historically, the appellate courts have resisted their
10 efforts, opining that the courts cannot and should not amend the clear constitutional
11 prohibitions by judicial fiat.

12 While the Boise Police Department Fairview facility may be desirable and its
13 construction in the best interests of Boise residents, the project's desirability is not
14 before the Court. By statute, the Court's role is limited to determining whether this
15 project is an "ordinary and necessary" expense. If it is, then Boise residents do not
16 need to vote on its construction. However, if the Court finds that the project is not an
17 "ordinary and necessary" expense, the Court must determine whether the proposed
18 "lease" is a multi-year debt or liability requiring voter approval. The Court finds that it
19 does require voter approval.

20 Factual Findings

21 Boise is a municipal corporation incorporated pursuant to *Idaho Code* §50-101 *et*
22 *sec.*, and it seeks to enter into an agreement ("Agreement") designed to allow it to
23 ultimately purchase a new police facility to be constructed at 27th and Fairview in Boise.
24 It calls this Agreement a "lease" Agreement and its semi-annual payments are called
25 "lease" payments.

26 1. The "lease" agreement.

27 On its face, the Agreement is a "lease" with an option to purchase, providing for
28 thirty (30) years of "lease" payments. Those "lease" payments include a "principal"
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30
31 ¹ Idaho Constitution art. VIII, §3.

1 component and "interest" on that "principal." By paying the total "principal" owing (from
2 \$16,680,000 to \$16,750,000) and all accrued "interest" (up to nearly \$19,000,000) plus
3 \$1.00, Boise can purchase the Fairview facility. The proposed project also includes
4 renovating the existing Barrister facility.

5 Boise currently owns the project property located at 27th and Fairview, and if the
6 Agreement is approved, Boise will transfer ownership of this property to the Agreement's
7 trustee, Bank of New York Western Trust Company ("BNY Western"). Boise will act
8 as BNY Western's agent and supervise the construction of the new facility by a private
9 contractor on the Fairview property. Certificates of Participation² will be issued by BNY
10 Western and sold to private investors to raise the costs of construction
11 (\$16,680,000.00).³ The "lease" requires Boise to make semi-annual payments for the
12 use of the new Fairview police facility, and the "lease" payments include a "principal"
13 component and "interest" on that "principal."

14 BNY Western will hold title to the Boise Police Department Fairview project
15 (defined as Boise's Fairview land, the proposed improvements, and the fixtures) on
16 behalf of the Certificate Owners, until and unless Boise exercises its purchase option.
17 The option to purchase the Fairview facility could be exercised during the thirty-year
18 term of the "lease" by payment according to an amortization schedule Included in the
19 "lease" plus \$1.00. The bulk of the "principal" is due at the end of the thirty year period
20 and the purchase price includes payment of the "principal" plus \$1.00. Or, should Boise
21 continue to make the scheduled rental payments for the entire thirty-year term, Boise
22 would acquire ownership of the facility, and reacquire ownership of its land, after the
23 final payment plus \$1.00.

24 The "lease" also contains a "non-appropriation" clause which provides for
25 termination of the lease at the end of any fiscal year should a future Boise City Council
26 not appropriate sufficient funds to pay the "lease" payments. According to Boise's
27

28
29 ² Certificates of Participation are designed to create a tax exempt "lease" to finance local government
30 capital improvement projects. The "lease" is structured as a series of one year renewable obligations
31 spread out over time and the principal amount (loaned) is divided and sold to multiple investors.

³ This amount could increase to \$16,750,000.00.

1 counsel, this clause will be eliminated if the Court finds the expenditure to be "ordinary
2 and necessary."

3 In addition, the "lease" defines a number of conditions in which Boise may be
4 declared in default, including failure to make a scheduled payment, failure to observe
5 certain covenants, or becoming insolvent. If Boise fails to appropriate funds, or if the
6 Owners of Certificates terminate the "lease" upon default by Boise, there are a number
7 of remedies available to the Owners of Certificates. While the "lease" ostensibly
8 distinguishes between a failure to appropriate funds and "default," the remedy for failing
9 to appropriate is the same as one of the remedies available upon default. Furthermore,
10 it is found in the section addressing default remedies.

11 According to the "lease" remedies for default, upon Boise's failure to appropriate
12 funds to pay the "lease," the Certificate Owners can either order the sale of the entire
13 Fairview project, including the Fairview property previously owned by Boise but
14 transferred to BNY Western as trustee, any fixtures and personal property, or they can
15 temporarily lease the project or portions of it for the benefit of the Certificate Owners.

16 If the Certificate Owners decide to sell the project, contrary to Boise's
17 contentions, Boise is not guaranteed any return for its Fairview property. Before any
18 sale proceeds would be distributed, any expenses relating to the sale, any costs for
19 repair or replacement of any project property, and expenses related to enforcing the
20 Agreement would be deducted from the proceeds. Furthermore, before any potential
21 distribution to Boise, the Certificate Owners are entitled to be repaid the total principal
22 amount held by each Certificate Owner. This means that the total principal, at least
23 \$16,680,000.00, must be repaid from the sale before any proceeds are available to
24 Boise. In other words, by signing this agreement, Boise property (the Fairview property)
25 becomes obligated for at least \$16,680,000.00. Because the majority of the principal
26 becomes due at the end of the thirty year period, Boise's property is significantly
27 encumbered for up to thirty years and may be lost as a penalty for failing to appropriate
28 funds to pay the "lease" payments in the future.

1 If the sale proceeds are insufficient to redeem all Outstanding Certificates in full,
2 each Certificate Owner is entitled to a *pro rata* share of such proceeds, based on the
3 outstanding principal amount held by each Certificate Owner, and Boise gets no return
4 for its Fairview property. Only if the sale proceeds exceed the amount required to pay
5 all the expenses and are sufficient to redeem all Outstanding Certificates in full, then the
6 balance remaining after paying any other amounts due under the Agreement will be paid
7 to Boise. Thus, the Court finds that because Boise's Fairview property is at risk for up to
8 \$16,680,000.00 plus accrued interest, there is a significant potential penalty which will
9 be imposed if a future city council fails to appropriate funds to pay the "lease" payments.

10 **2. Boise Police Department Proposal.**

11 Boise has approximately 260 police officers and 53 civilian police employees.
12 From 1977 to 2000, the Boise Police Department headquarters and certain associated
13 headquarters staff remained located in a 25-year-old law enforcement facility located at
14 7200 Barrister Drive in shared facilities with the Ada County Sheriff's Office. To meet
15 increased demands for direct law enforcement service and the increased needs for
16 public safety programs, certain Boise Police Department non-headquarters staff were
17 re-located into leased facilities throughout Boise. By 2001, Boise Police Department
18 staff occupied nearly 35,000 square feet of leased or City-owned space throughout
19 Boise.

20 In 2000, Boise had annual rental costs for Boise Police Department leased
21 facilities of approximately \$193,985. Annual leasing costs in 2002 for Boise Police
22 Department facilities total \$230,105 for 39,491 square feet of space, which area figure
23 also includes non-leased space at the Public Safety Building.

24 Expansion of the Boise Police Department, as well as a similar expansion of the
25 Ada County Sheriff's Office and the Ada County-City Emergency Management, also
26 located in the Barrister facility, have filled the Public Safety Building far beyond its
27 capacity. Any future growth of the Boise Police Department will now have to take place
28 in leased or City-owned operations away from 7200 Barrister Drive. This project would
29 centralize Boise Police Department headquarters. Boise anticipates that the renovated
30 Boise portion of the Barrister facility will house the Bench Precinct. The proposed
31

1 Fairview downtown area facility will not only serve as Boise Police Department
2 headquarters but as a Valley Precinct headquarters, as well. This location will put
3 officers much closer to the downtown, Harris Ranch, Southeast Boise, and North End
4 areas.

5 However, it would not eliminate the need for leasing additional properties to meet
6 various police needs. The Boise Police Department facilities Master Plan calls for
7 retaining the various Community Outreach Division substations and the Vice/Narcotics
8 office apart from the proposed Fairview centralized location. The Boise Police
9 Department Office of Internal Affairs will remain located temporarily in the remodeled
10 section of City Hall. It is anticipated, however, that Internal Affairs may eventually move
11 into the proposed Boise Police Department headquarters building once it is completed.

12 If the Boise Police Department cannot centralize its headquarters facility in the
13 downtown area and combine it with one of its proposed precinct facilities, Boise claims it
14 will need to lease an estimated 142,600 square feet of additional space by 2020 to
15 house various police activities and services. Boise claims that acquiring, constructing
16 and moving to a more centralized, downtown area Boise Police Department facility will
17 result in various cost savings or benefits to Boise and its taxpayers. However, in
18 response to the Court's questions, Boise's counsel, Mr. Skinner, represented that if
19 future city councils failed to appropriate funds for this "lease," the Boise Police
20 Department could easily relocate to other leased facilities throughout Boise. He
21 indicated this would not be a problem. Thus, based on Boise's representations at the
22 oral argument, sufficient leased capacity exists to house Boise Police Department's
23 expanded needs even if this Agreement is not approved and even if future Boise City
24 Councils fail to appropriate funding, thus, triggering sale of the project property.

25 The proposed Fairview facility is planned to include an indoor eight-lane handgun
26 range,⁴ a child care facility, a dedicated Training Center with office and classroom
27 space, an armory for weapons inventory and range support, a physical fitness facility,
28

29
30 ⁴ Currently, Boise Police Department has an outdoor range, leased from the Boise Police Association and
31 located in the foothills northeast of Boise. Boise Police Department intends to stop using that outdoor
range on September 1, 2002, based on an increase in leasing costs to \$12,000.00 per year.

1 defensive tactics training, building support services (e.g., break rooms, adequate
2 storage to meet projected needs, locker rooms restrooms, and showers) and public
3 meeting space for officers to meet with citizen groups on such topics as crime
4 prevention and public safety.

5 ANALYSIS

6 By filing a Petition, Boise requests the Court examine the Agreement and
7 determine whether the Agreement can be validly executed in the absence of voter
8 approval. While the judicial confirmation law has not been tested in higher courts, the
9 law clearly requires the Court to independently examine the Petition and the Petitioner's
10 claims even in the absence of property owner, taxpayer, or elector objections. The
11 Court is not allowed to simply "rubber stamp" a Petitioner's request.

12 It is the Court's responsibility to determine whether the Petitioner has legal
13 authority for its proposed actions, whether the obligation or agreement is permissible
14 under the general laws of the state and whether Idaho's Constitution requires voter
15 approval. *Idaho Code* §7-1308 provides in relevant part as follows:

16 (1) The filing of the petition and publication and posting of the notice as
17 provided in section 7-1306, *Idaho Code*, shall be sufficient to give the court
18 jurisdiction, and upon hearing the court shall examine into and determine
19 all matters and things affecting each question submitted, shall make such
20 findings with reference thereto and render such judgment and decree
thereon as the case warrants.

21 (2) In making the findings set forth in subsection (1) of this section, the
22 court shall find upon what legal authority the political subdivision bases the
23 petition for the proposed bond, obligation or agreement and whether such
24 bond, obligation or agreement is permissible under the general laws of the
state or is permissible as an ordinary and necessary expense of the
political subdivision authorized by the general laws of the state and shall
determine if the political subdivision is entitled to the relief sought. . . .⁵

25 Therefore, whether taxpayers, property owners or voters appear in the action is
26 irrelevant. The Court is required to make its own inquiry and findings. Thus,
27
28
29

30 ⁵ *Idaho Code* §7-1308 (emphasis added).
31

1 Respondent Auld's suggestion that the statute calls for an unconstitutional advisory
2 opinion in violation of Article V, §1,⁶ is simply wrong.

3 An advisory opinion is a "nonbinding statement by a court of its interpretation of
4 the law on a matter submitted for that purpose."⁷ The Court finds the statute does not
5 call for a non-binding opinion and the cases cited by Respondent Auld simply do not
6 apply to this case. The statute clearly puts the matter at issue and the Court's decision
7 is not advisory; it is binding.

8 In this case, however, various Boise property owners and taxpayers did intervene
9 and challenged Boise's contentions.

10 Respondent Auld and Respondent Frazier allege Boise's proposed agreement
11 violates the Idaho Constitution, Art. VIII, §3, because no election was held to obtain
12 approval of the electorate to enter into the "lease" agreement in question. Article VIII,
13 §3 requires both that the expenditure be authorized by the general laws of the state and
14 that it be an "ordinary and necessary" one or that it not be a liability or debt.⁸ Art. VIII,
15 §3 states in relevant part as follows:

16 No . . . city . . . shall incur any indebtedness, or liability, in any manner, or
17 for any purpose, exceeding in that year, the income and revenue provided
18 for it for such year, without the assent of two thirds (2/3) of the qualified
19 electors thereof voting at an election to be held for that purpose, nor
20 unless, before or at the time of incurring such indebtedness, provisions
21 shall be made for the collection of an annual tax sufficient to pay the
22 interest on such indebtedness as it falls due, and also to constitute a
23 sinking fund for the payment of the principal thereof, within thirty (30) years
24 from the time of contracting the same. Any indebtedness or liability
25 incurred contrary to this provision shall be void: Provided, that this section
26 shall not be construed to apply to the ordinary and necessary expenses
27 authorized by the general laws of the state⁹

28
29 ⁶ Idaho Const., art. V, § 1 provides in relevant part as follows: " . . . Feigned issues are prohibited"

30 ⁷ BLACK'S LAW DICTIONARY (7TH ED. 1999), "OPINION".

31 ⁸ See *City of Pocatello v. Peterson*, 93 Idaho 774, 777, 473 P.2d 644, 647 (1970).

32 ⁹ Idaho Constitution, art. VIII, § 3 (emphasis added).

1 In its Petition, however, Boise contends no election is necessary because the
2 proposed expenditures are "ordinary and necessary." In addition, Boise argues that if
3 they are not "ordinary and necessary," the expenditures do not constitute a liability or
4 debt exceeding Boise's yearly income and revenue provided for it.

5 While the Court finds that Boise has the appropriate legal authority under the
6 general laws for its proposal, the Court further finds the expenditures are not "ordinary
7 and necessary" and constitute a multi-year liability exceeding Boise's yearly income and
8 revenue provided for the project. Therefore, Boise must submit this expenditure to a
9 vote of the electorate.

10 **A. Boise has legal authority for the proposed agreement.**

11 As a municipal corporation incorporated pursuant to *Idaho Code* §50-101 *et sec.*,
12 Boise's authority is limited to those authorities delegated to it by the Legislature. Boise
13 relies on *Idaho Code* §50-1403¹⁰ as authorizing it to transfer its Fairview property to a
14 trustee (BNY Western) for "security purposes, or for purposes of accommodating a
15 transaction, or for funding of construction of capital facilities on city owned property." In
16 this case, Boise contends the proposed transfer of its Fairview property to BNY Western
17 fulfills all three purposes.

18 Boise also has authority to acquire and lease property and erect buildings for its
19 use.¹¹ Therefore, the Court finds Boise has the requisite general statutory authority to
20 construct this project.

21 Having found Boise has the requisite statutory authority to construct this project,
22 the Court's inquiry does not end. The Court must next determine whether Art. VIII, §3,
23 Idaho Constitution, requires Boise to submit its proposed project for voter approval.

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25
26
27 ¹⁰ *Idaho Code* §50-1403. "After a public hearing has been conducted, the city council may proceed to
28 exchange, convey or offer for sale the real property in question, subject to the restrictions of section 50-
29 1401, Idaho Code. The city council shall be governed by the following provisions: . . . (5) When it is
30 determined by the city council to be in the city's best interest, the city may transfer property to a trustee for
31 security purposes, or for purposes of accommodating a transaction, or for funding of construction of capital
32 facilities on city owned property."

¹¹ See *Idaho Code* §50-301.

1 **B. The Court finds the proposed expenditure must be approved by the**
2 **electorate.**

3 The Idaho Constitution was framed and adopted in 1889, and the constitutional
4 history clearly demonstrates that the framers intended to severely limit the ability of local
5 government to incur indebtedness.¹² Section 3 prohibits local governments from
6 incurring debt and the framers "employed more sweeping and prohibitive language in
7 framing section 3 of article 8, and pronounced a more positive prohibition against
8 excessive indebtedness, than is to be found in any other Constitution"¹³

9 Although the subject of frequent litigation, Article VIII, §3 survived intact for nearly
10 sixty years without amendment. During that period, the Idaho Supreme Court regularly
11 applied the limitations strictly, requiring local governments to submit various
12 expenditures to the voters.¹⁴ This section was first amended in 1950 to permit local
13 government to issue revenue bonds¹⁵ for constructing water and sewer systems,
14 treatment plants and off street parking facilities.

15 Subsequently, a number of amendments have allowed local governments to
16 issue revenue bonds for facilities like recreational or air navigation facilities.¹⁶ The vote
17 requirements for various expenditures have also been lowered for some local
18 government projects. For example, the vote requirement to approve revenue bonds for
19 water and sewer systems was lowered from two-thirds to a simple majority.¹⁷ This
20 section has been amended more than any other section in the constitution and Idaho
21 voters have also added three sections to it.¹⁸

22 Given this, some authors contend that by amendment to the constitution and by
23 adding new sections, the trend appears to be away from applying strict debt
24 limitations.¹⁹ However, in each case, loosening those limitations has required an
25

26 ¹² See Proceedings Constitutional Convention, vol. 1, pp. 590, 593.

27 ¹³ *Feil v. City of Coeur d'Alene*, 23 Idaho 32, 129 P. 643, 648-649 (1912).

28 ¹⁴ See Dennis Colson, *Idaho's Constitution*, pp. 105-110, 198-202 (1991).

29 ¹⁵ Revenue bonds are repaid from rates and charges assessed against users of the facilities rather than
from taxes assessed against the taxpayer.

30 ¹⁶ Colson, *supra* note 14, at 109 and 201.

31 ¹⁷ *Id.*

32 ¹⁸ *Id.* at 110 and 202.

¹⁹ *Id.* at 110.

1 amendment to the state constitution or a vote of the electorate. Significantly, on all six
2 occasions, no one chose to amend the section at issue here.

3 It is against that backdrop that the Court must analyze Boise's Petition. The
4 Court notes that the parties rely on case law from other jurisdictions. However, the
5 Court finds that the cases relied on are based upon specific statutes, constitutional
6 provisions, and legislative history unique to those jurisdictions and while it is instructive,
7 it is of limited assistance.

8 Furthermore, Idaho courts have made it clear that Idaho strictly construes this
9 provision and does not follow other jurisdictions' interpretations.²⁰ In fact, the Idaho
10 court has frequently been asked to revise its strict construction by local governments
11 advocating adoption of other states' interpretations. Each time, the Idaho court has
12 resisted their requests, and this Court believes such resistance is proper.

13 Moreover, many of those other jurisdictions are "outcome" oriented – approving
14 schemes to evade debt limitations because those courts find the outcome is in the
15 people's best interest writing things like "[i]t is never an illegal evasion to accomplish a
16 desired result, lawful in itself, by discovering a legal way to do it."²¹ States that employ
17 this circular reasoning are noted to generally approve any and all lease-purchase
18 agreements.²²

19 As the court in *Boise Development* wrote in commenting on a California²³ court's
20 circuitous reasoning based on such an outcome oriented philosophy:

21 [W]hen the court attempts by argument to escape the force and effect of
22 the constitutional provision under consideration and show that the city
23 incurred no liability under the contract, we submit that its reasoning is not
24 sound.²⁴

24 Therefore, the Court has limited its analysis to considering and applying Idaho cases.

27 ²⁰ See, e.g., *Miller v. City of Buhl*, 48 Idaho 668, 284 P. 843, 845 (1930); *Feil*, 23 Idaho 32, 129 P. 643.

28 ²¹ See *Bulman v. McCrane*, 312 A.2d 857, 861 (N.J. 1973) quoting *Kelley v. Earle*, 190 A. 140, 147 (Pa.
Sup.Ct. 1937).

29 ²² See Rueven Mark Bisk, *State and Municipal Lease-Purchase Agreements: A Reassessment*, 7 Harvard
J.L.Pub.Pol'y 521,540 (1984).

30 ²³ *McBean v. City of Fresno*, 44 P. 358 (Cal. 1896).

31 ²⁴ *Boise Development Co. v. City of Boise*, 26 Idaho 347, 143 P. 531, 535, (1914).

1 **1. The proposed project is not an "ordinary and necessary"**
2 **expenditure.**

3 Article VIII, §3 of the Idaho Constitution prohibits municipalities from incurring any
4 indebtedness or liability exceeding the income or revenue of that year unless the
5 indebtedness or liability is approved by two-thirds of the qualified electors. "Ordinary
6 and necessary" expenses are, however, expressly excepted from this provision.²⁵

7 The two terms, "ordinary and necessary," are used conjunctively; "hence, to come
8 within the constitutional proviso or exception, expenditures made in excess of the
9 revenues of any current year must not only be for ordinary expenses, such as are usual
10 to the maintenance of the county government, the conduct of its necessary business,
11 and the protection of its property, but there must exist a necessity for making the
12 expenditure at or during such year."²⁶ Thus, the issue presented in this case is whether
13 construction of an entirely a new Boise Police Department facility at a new location,
14 Fairview and 27th, is both "ordinary and necessary."

15 Boise claims this project is "ordinary and necessary" and, thus, expressly
16 excepted. It also claims that all expenditures made for police protection are inherently
17 "ordinary and necessary." The Court rejects these claims and, without reaching whether
18 it is a necessary expense, the Court finds that it is clearly not an "ordinary" expense.

19 **a. An expenditure for constructing entirely new municipal**
20 **facilities is not normally an "ordinary and necessary" expense.**

21 Early Idaho cases interpreted the "ordinary and necessary" language very
22 narrowly, often comparing the proposed expense amount to the city or county's revenue
23 for that year.²⁷ In *County of Ada v. Bullen Bridge Co.*, the court wrote:

24 If it is claimed that this expenditure comes within the proviso of section 3,
25 article 8, of the constitution, we answer that a construction of that proviso,
26 as well as of the entire section, was given by this court in *Bannock Co. v.*
27 *Bunting*, 4 Idaho 156, 37 Pac. 277, and we would suggest that an
28 improvement involving an expenditure of nearly \$40,000, where the
29 revenue of the county for the year was only about \$70,000, would not
30 readily be classed as an 'ordinary and necessary expense.' It would be

31 ²⁵ *Loomis v. City of Hailey*, 119 Idaho 434, 440, 807 P.2d 1272, 1278 (1991).

32 ²⁶ *Dunbar v. Board of Com'rs of Canyon County*, 5 Idaho 407, 49 P. 409, 411 (1897).

33 ²⁷ *Asson v. City of Burley*, 105 Idaho 432, 441, 670 P.2d 839, 848 (1983).

1 difficult, we apprehend, to name an expense under such a construction
2 that would not be 'ordinary and necessary.' If a necessity existed for the
3 bridge, there was no conceivable excuse for not complying with the plainly
4 expressed provisions of the constitution and the statutes. If these
provisions of law are to be ignored or defeated upon flimsy technicalities, it
is difficult to see what protection the people will have.²⁸

5 In other words, necessity does not drive the analysis, because, as the court in
6 *Bullen* noted, the need for a facility can almost always be established; it is extremely
7 subjective. Thus, to qualify for an exemption, the expenditure must be both ordinary and
8 necessary.

9 Idaho Courts have held the following expenditures are not "ordinary and
10 necessary": the construction of bridges;²⁹ construction of a wagon road;³⁰ purchase of
11 a water system;³¹ construction of a schoolhouse addition;³² and purchase of a street
12 sprinkler.³³

13 Expenditures held to be "ordinary and necessary" within the exception include:
14 paying city officer and employee salaries;³⁴ repairing existing city waterworks;³⁵
15 constructing a jail in a newly created county;³⁶ street maintenance;³⁷ and the cost of
16 employing school teachers.³⁸ These cases fit into three distinct categories. Some
17 concerned the repair of existing facilities. Others involved performing ordinary
18 maintenance on existing facilities. Still others involved the "ordinary and necessary"
19 construction of new facilities to meet the requirements for essential services of newly
20 created local governments. The *Jones* case is instructive. In *Jones*, the court said:

21 The ordinary and necessary expenses of a new county include the
22 expenditures [like transcription of certain records, furniture, fixtures, record
23

24 ²⁸ *County of Ada v. Bullen Bridge Co.*, 5 Idaho 79, 90, 47 P. 818, 822 (1896) (emphasis added), quoted
25 with approval in *Asson*, 105 Idaho at 441, 670 P.2d at 848; See also, *Ball v. Bannock Co.*, 5 Idaho 602, 51
P. 454 (1897).

26 ²⁹ See generally, *Bullen Bridge Co.*, 5 Idaho 79, 47 P. 818.

27 ³⁰ *McNutt v. Lemhi Co.*, 12 Idaho 63, 84 P. 1054 (1906).

28 ³¹ *Woodward v. City of Grangeville*, 13 Idaho 652, 92 P. 840 (1907).

29 ³² *Petrie v. Common School Dist.*, 44 Idaho 92, 255 P. 318 (1927).

30 ³³ *Williams v. City of Emmett*, 51 Idaho 500, 6 P.2d 475 (1931).

31 ³⁴ *Butler v. Lewiston*, 11 Idaho 393, 83 P. 234 (1905).

32 ³⁵ *Hickey v. City of Nampa*, 22 Idaho 41, 124 P. 280 (1912).

33 ³⁶ *Jones v. Power Co.*, 27 Idaho 656, 150 P. 35 (1915).

34 ³⁷ *Thomas v. Glindeman*, 33 Idaho 394, 195 P. 92 (1921).

35 ³⁸ *Corum v. Common School Dist.*, 55 Idaho 725, 47 P.2d 889 (1935).

1 books, and constructing county jails]. To hold otherwise would prevent the
2 new county government from going into operation until the question of the
3 expense of procuring copies of the records, erecting a jail, and procuring
4 offices, furniture, and equipment necessary for the conduct of the business
5 of the county was submitted to a vote. Neither the framers of the
6 Constitution nor the Legislature intended that it should be necessary to
7 submit such a question to the electors.³⁹

8 However, the *Jones* court went on to say "[w]hen a county organization is
9 complete, and the county government is in running operation, expenditures over and
10 above those mentioned in section 2, art. 8, of the Constitution must be submitted to the
11 voters."⁴⁰ The court's emphasis on the fact that once the local government is organized,
12 the debt limitations apply is significant. This means that once the initial organization is
13 complete, new expenditures must obtain voter approval.

14 As the *Asson* court explained in reviewing the earlier Idaho cases, "[c]omparison
15 of these earlier cases reveals one clear distinction between those expenses held to be
16 ordinary and necessary and those held not to be: new construction or the purchase of
17 new equipment or facilities as opposed to repair, partial replacement or reconditioning of
18 existing facilities," with new construction being found to be not an "ordinary and
19 necessary" expenditure.⁴¹ The court in *Asson* further opined that while recent cases
20 applying Idaho Constitution, art. VIII, §3, have interpreted the "ordinary and necessary"
21 language more broadly, those decisions are not inconsistent with earlier case authority.

22 For example, in *Hanson v. City of Idaho Falls*,⁴² the Supreme Court held that
23 establishing a policeman's retirement fund was within the "ordinary and necessary"
24 proviso, reasoning that it was merely an extension of the city's salary compensation and
25 support of its municipal law enforcement staff.

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29 ³⁹ *Jones*, 33 Idaho at 663, 150 P. at 36-37.

30 ⁴⁰ *Id.* (emphasis added).

31 ⁴¹ *Asson*, 105 Idaho at 442, 670 P.2d at 949.

32 ⁴² *Hanson v. City of Idaho Falls*, 92 Idaho 512, 446 P.2d 634 (1968).

1 Thus, the Asson court found that the Supreme Court's most recent decisions
2 could be reconciled with earlier cases. It noted that the following local government
3 expenditures involving new construction or purchase of new facilities were required to
4 comply with the requirements of Art. VIII, § 3: purchase of an existing water system from
5 the estate of a deceased city resident in the *Woodward*⁴³ case; purchase of electric
6 generating system, to be paid for from receipts from sale of power and light;⁴⁴ entering
7 into agreement with natural gas distribution system to provide gas for city residents and
8 vicinity;⁴⁵ purchase by city of municipal lighting plant, and of waterworks system;⁴⁶
9 construction of courthouse annex.⁴⁷ These were all expenditures for new facilities and
10 did not involve repair or renovation of existing facilities.

11 Furthermore, contrary to Boise's argument, the *Pocatello* decision cannot be
12 argued to condone construction of entirely new facilities as "ordinary and necessary."
13 While the project may have entailed new construction, the Supreme Court clearly
14 articulated the issue before it as:

15 The principal issue presented by this appeal is whether the repair and
16 improvement of the municipal airport by the City of Pocatello is an ordinary
17 and necessary expense falling within the pertinent constitutional
provision.⁴⁸

18 While Boise suggests that the Pocatello airport facility's inadequacy was a
19 significant factor in the Supreme Court's decision, the Court finds that it was only one
20 factor and was not determinative. Instead, the Supreme Court focused on the need to
21 repair an aging, unsafe and unsound structure. It does not appear that if the only basis
22 for constructing a new structure in *Pocatello* was its present inadequacy, that the
23 Supreme Court would have arrived at the same decision. (In the case before this Court,
24 Boise presented no facts that its current leased or owned structures are "unsound" and
25 its safety claims are not of the same caliber as those in *Pocatello*.)
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28 ⁴³ *Woodward*, 13 Idaho 652, 92 P. 840.

⁴⁴ *Miller*, 48 Idaho 668, 284 P. 843.

29 ⁴⁵ *O'Bryant v. City of Idaho Falls*, 78 Idaho 313, 303 P.2d 672 (1956).

⁴⁶ *Straughan v. City of Coeur d'Alene*, 53 Idaho 494, 24 P.2d 321 (1932).

30 ⁴⁷ *Reynolds Construction Co. v. County of Twin Falls*, 92 Idaho 61, 437 P.2d 14 (1968).

31 ⁴⁸ *Pocatello*, 93 Idaho at 776, 473 P.2d at 646.

1 In addition, the court in *Asson* considered this very contention that inadequacy
2 alone may justify an expense as "ordinary and necessary" and rejected it. The local
3 government in *Asson* argued that future power needs could not be met by the present
4 power supplies, and they were inadequate for future needs. The Supreme Court
5 addressed this concern as follows:

6 The question is whether the cities' belief that there would be inadequate
7 power supplies several years in the future is sufficiently analogous to the
8 cases which hold that repair or reconditioning of existing facilities is an
9 ordinary and necessary expense. . . . One cannot stretch the meaning of
"ordinary" to include an expense for which there could not be, until years
later, certainty of limits.⁴⁹

10 Therefore, the Court finds that the determinative factor is whether the proposed
11 expenditure contemplates construction of a new facility, as opposed to repairing,
12 renovating or reconditioning an existing facility.

13 **b. Construction of the Boise Police Department Fairview facility**
14 **expenditure is not an ordinary expense.**

15 Against that legal authority, Boise contends that its proposed Boise Police
16 Department Fairview facility is an "ordinary and necessary" expense and, thus, outside
17 the Art. VIII, §3 debt limitation. The Court disagrees.

18 First, Boise contends that all expenditures for police protection are *inherently*
19 "ordinary and necessary" expenses and, thus, always escape the application of the debt
20 limitations of Art. VIII, §3. It relies on the following quotation found in *Hanson*: "One of
21 the most fundamental and necessary expenses of municipal government is that which is
22 incurred in the provision of adequate police protection for persons and property."⁵⁰

23 However, in *Hanson*, the Supreme Court did not rule that because an expenditure
24 was for police protection it escaped constitutional debt limitations; it merely applied the
25 early Idaho rulings that municipal employee salaries and related expenses are "ordinary
26 and necessary" which they clearly are. To adopt Boise's view of the law would
27 perpetually exempt all police protection expenditures from voter scrutiny – even where
28 the expenditure is clearly not "ordinary and necessary," is only marginally related to

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30 ⁴⁹ *Asson*, 105 Idaho at 442-43, 670 P.2d at 849-50.

31 ⁵⁰ *Hanson*, 92 Idaho at 514, 446 P.2d 636.

1 police protection or even grossly improper. Thus, taxpayers could find themselves
2 saddled with huge debts and liabilities without ever having approved those expenditures.
3 That is clearly not what the constitution intends. Therefore, the Court rejects this
4 argument and finds that while some level of police protection is fundamentally
5 necessary, this does not mean that all expenditures for police protection are "ordinary
6 and necessary" within the exception found in Art. VIII, §3.

7 Second, Boise contends that if the expenditure is not *inherently* "ordinary and
8 necessary," then the Court should find it is "ordinary and necessary" based on Boise's
9 justification for the project. In support of its contention, it asserts the project will allow
10 Boise Police Department to centralize its operations and to have adequate space to
11 house its law enforcement operations and activities for future population growth. Boise
12 further asserts the project will enhance the Boise Police Department's public safety and
13 protection services, administration and communication effectiveness and efficiency, and
14 community-based policing programs. Boise also asserts the project will maintain or
15 improve Boise Police Department emergency response by reducing police and
16 emergency response times to Boise residents throughout all Boise Police Department
17 public service areas. Without finding these facts established, the Court finds that these
18 contentions, even if true, would not support a finding that this project is "ordinary and
19 necessary." If the Court were to adopt such reasoning then every time a local
20 government wanted more room or wanted to improve service, such expenditures would
21 escape the debt limitations.

22 While it also argued there were safety concerns, the Court finds there is no
23 evidence of any true safety problems similar to those found in *Pocatello*. Instead, the
24 Court agrees that expanding services and a growing population may support the
25 desirability for a new facility, and it may be in the public's best interests. However, that
26 does not make the expense "ordinary." "Ordinary" means "regular; usual; normal;
27 common; often recurring . . . not characterized by peculiar or unusual circumstances."⁵¹
28 This is clearly an extraordinary, planned expenditure for an expensive capital
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31 ⁵¹ *Pocatello*, 93 Idaho at 778, 473 P.2d at 648, quoted in *Asson*, 105 Idaho at 443, 670 P.2d at 850.

1 improvement – a new stand alone centralized police department. It is precisely these
2 kinds of capital improvement projects that the Constitution requires be approved by the
3 voters who ultimately pay for these projects.

4 While some Idaho cases have approved non-recurring expenses as "ordinary,"
5 those cases can be distinguished from Boise's proposal. Boise's project is not driven by
6 emergency like *Hickey* where the city owned waterworks system was so damaged,
7 impaired or destroyed as to render it of no practical value or use, requiring immediate
8 action by the city council.⁵² The *Hickey* court rightly concluded that it was an ordinary
9 expense to rebuild a clearly necessary system in that case where it had been utterly
10 destroyed.

11 Likewise, the situation is unlike the situation in *Jones*,⁵³ Boise has long been
12 incorporated. It is not a newly created local government in need of establishing certain
13 essential services in order to function and serve the public.

14 Furthermore, the Court notes that Boise's counsel stated that if future city
15 councils failed to appropriate funds for this project and the Boise Police Department was
16 evicted from the new Fairview facility, Boise could easily re-locate the Boise Police
17 Department to other leased property. As Respondent Auld argued, this undercuts
18 Boise's contention that this project is even necessary.

19 While making significant repairs to an existing structure can be an "ordinary and
20 necessary" expense even if such extensive repairs occur only at infrequent intervals, this
21 is not such a case.⁵⁴ By building (on behalf of BNY Western) this nearly \$17 million⁵⁵
22 facility which may ultimately cost Boise residents up to \$35 million Boise is not proposing
23 to renovate or repair an existing structure; it is constructing a new building unrelated to
24 existing facilities.⁵⁶

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27 ⁵² *Hickey*, 22 Idaho 41, 124 P. 280.

28 ⁵³ *Jones*, 27 Idaho 656, 150 P. 35.

29 ⁵⁴ *Hickey*, 22 Idaho 41, 124 P. 280.

30 ⁵⁵ If Boise pays the full "lease" principal plus interest over the entire 30 year period, the total cost for the
31 Boise Police Department project is approximately \$35 million.

32 ⁵⁶ To the extent the project only includes the renovation and repair of the Barrister facility, this would be an
"ordinary and necessary" expense. At this time, however, the projects have not be presented as separate
projects.

1 Furthermore, while repairing or replacing an "an unsound structure" which is
2 "unsafe for the citizens of the area" may constitute an "ordinary and necessary" expense,
3 the Court finds that Boise has not established such a public safety necessity exists for this
4 project.

5 While Respondent Auld argues that this Agreement creates a liability because it
6 potentially could affect Boise's credit rating, the Court rejects this argument. The Idaho
7 Supreme Court has ruled that this section requires the imposition of some monetary
8 liability in favor of the non-public entity.⁵⁷ While, It may be true that a failure to
9 appropriate funds in the future will adversely impact Boise's credit rating,⁵⁸ it does not
10 create a debt or liability within the meaning of this section. However, a potential adverse
11 impact on Boise's credit rating may provide yet another incentive for future city councils
12 to continue funding the "lease,"⁵⁹ contrary to Boise's contention.

13 Based on the above, the Court finds this proposed expense is not an "ordinary and
14 necessary" expense. Therefore, the Court must consider whether the proposed
15 Agreement creates a liability or debt in excess of Boise's current year budget for it
16 requiring Boise to submit the proposed expenditure to the voters.

17 **2. The proposed Agreement constitutes a "liability" in violation of**
18 **Article VIII, §3 of the Idaho Constitution.**

19 **a. Article VIII, §3 of the Idaho Constitution not only prohibits**
20 **incurring indebtedness, It prohibits incurring *liability in any***
manner or for any purpose.

21 "'Liability' is a much more sweeping and comprehensive term than
22 'indebtedness.'"⁶⁰ As the *Feil* court noted, the Idaho Constitution "not only prohibits
23 incurring any indebtedness, but it also prohibits incurring any liability 'in any manner or
24 for any purpose,' exceeding the yearly income and revenue."⁶¹ Furthermore, the *Feil*

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27 ⁵⁷ *Hanson*, 92 Idaho at 516, 446 P.2d at 638.

28 ⁵⁸ Jon Magnusson, *Lease-Financing by Municipal Corporations as a Way Around Debt Limitations*, 25
GEO. WASH. L. REV. 377, 393 (1957).

29 ⁵⁹ See *State ex rel. Anzai*, 936 P.2d 637 (Haw. 1997); *State ex rel. Kane v. Goldschmidt*, 783 P.2d 988
(Ore. 1989).

30 ⁶⁰ *Feil*, 23 Idaho at 50, 129 P. at 649; See also *Boise Development Co.*, 26 Idaho 347, 143 P. 531;
Straughan, 53 Idaho 494, 24 P.2d 321.

31 ⁶¹ *Feil*, 23 Idaho at 50, 129 P. at 649 (emphasis added).

1 court recognized that local governments were precluded from trying to circumvent the
2 constitutional limitations.

3 The framers of our Constitution were not content to say that no city shall
4 incur any indebtedness "in any manner or for any purpose," but they rather
5 preferred to say that no city shall incur any indebtedness or liability in any
6 manner, or for any purpose. It must be clear to the ordinary mind, on
7 reading this language, that the framers of the Constitution meant to cover
8 all kinds and character of debts and obligations for which a city may
become bound, and to preclude circuitous and evasive methods of
incurring debts and obligations to be met by the city or its inhabitants.⁶²

9 After pointing out that the framers intended for liability to be more expansive than
10 a debt, the *Feil* court defined liability as "[t]he state of being bound or obliged in law or
11 justice to do, pay, or make good something; legal responsibility" and as "the condition of
12 being responsible for a possible or actual loss, penalty, evil, expense or burden."⁶³

13 It is noteworthy that in spite of Justice Stewart's dissent in *Feil* arguing that the
14 terms "indebtedness" and "liability" are essentially synonymous, several subsequent
15 Idaho courts have accepted and followed the majority's view of liability being a much
16 broader term with larger implications.⁶⁴ For example, in *Boise Development*, the court
17 used a hypothetical to illustrate the difference between the term "debt" and "liability."⁶⁵
18 The hypothetical case the court put forth was:

19 If A. by a valid contract employs B. to work for him for one year at \$50 per
20 month, payable at the end of each and every month, would this contract
21 not be a liability on A. as soon as executed? A *debt* of \$50 would accrue
22 thereon at the end of each month, but the *liability* would be incurred at the
time the contract was entered into.⁶⁶

23 This hypothetical illustrates the difference between the two terms and squarely rejects
24 Justice Stewart's contention that the terms are synonymous.

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28 ⁶² *Id.* (emphasis added).

29 ⁶³ *Id.*

30 ⁶⁴ See *Hanson*, 92 Idaho 514, 446 P.2d at 636; *O'Bryant*, 78 Idaho at 326, 303 P.2d at 678; *Straughan*, 53
Idaho 501-501, 24 P.2d at 322; *Boise Development Co.*, 26 Idaho at 361-362, 143 P.2d at 535.

31 ⁶⁵ *Boise Development Co.*, 26 Idaho at 361-362, 143 P.2d at 535.

32 ⁶⁶ *Id.* (Emphasis added.)

1 Thus, Idaho cases have repeatedly held that it is improper to attempt to evade or
2 circumvent the force and effect of Art. VIII, §3 or attempt to do what it cannot do
3 directly.⁶⁷

4 In *O'Bryant*, for example, the court denounced efforts to evade constitutional
5 limitations,⁶⁸ quoting a Colorado case holding: "Contrary to popular opinion, mere
6 schemes to evade law, once their true character is established, are impotent for the
7 purpose intended. Courts sweep them aside as so much rubbish."⁶⁹ The *Dunbar* court
8 also warned that:

9 If boards of county commissioners are permitted to violate, disregard, and
10 set at naught one plain provision of the constitution, then they may violate
11 any and all provisions of that instrument, and the people who pay taxes
12 are bear the burdens of government are without protection, and at the
mercy and whims of county commissioners.⁷⁰

13 The Idaho Supreme Court's history demonstrates its real concern about local
14 governments trying to circumvent the state constitution and the ramifications for allowing
15 such evasion.

16 Thus, the Constitution clearly requires that, before an indebtedness or liability is
17 incurred which exceeds the income and revenue provided for it in the current year, it
18 must be submitted to a vote of the people and be authorized by two-thirds of the
19 qualified electors.

20 **b. Bolse's proposed expenditure creates a liability as**
21 **contemplated by Article VIII, §3 of the Idaho Constitution.**

22 "What cannot be done directly (pursuant to our constitution) cannot be
23 accomplished indirectly. That which the constitution directly prohibits may not be done
24 by indirection through a plan or instrumentality attempting to evade the constitutional
25 prohibition."⁷¹ Article VIII, §3 was adopted precisely "to preclude circuitous and evasive
26 methods of incurring debts and obligations to be met by the city."⁷² The Court finds that

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28 ⁶⁷ See *O'Bryant*, 78 Idaho at 325-326, 303 P.2d at 674; *Dunbar*, 5 Idaho at 415, 49 P. at 412.

29 ⁶⁸ *O'Bryant*, 78 Idaho at 325, 303 P.2d at 678.

30 ⁶⁹ See *Id.* quoting *Davis v. People*, 247 P. 801, 802 (Colo. Sup. Ct. 1926).

31 ⁷⁰ *Dunbar*, 5 Idaho at 414, 49 P. at 411.

32 ⁷¹ *O'Bryant*, 78 Idaho 313, 303 P.2d 672.

⁷² *Feil*, 23 Idaho at 50, 129 P. at 649.

1 the clear purpose of this Agreement is to allow Boise to do indirectly what it cannot do
2 directly.

3 In this case, Boise would acquire ownership of the Boise Police Department
4 Fairview facility simply by making the agreed "lease" payments over the thirty-year term
5 plus \$1.00 for a total of approximately \$35 million. Each semi-annual "lease" payment
6 represents more than just a present debt for the use of the facility for a six month period.
7 The arrangement is in essence an installment-purchase agreement or loan for the
8 acquisition of a public building, with outside financing and payments spread over thirty
9 years, and as such it requires voter approval. Furthermore, to secure this Agreement,
10 Boise transfers title to municipal property, the real property located at Fairview, and can
11 only guarantee redemption of that property upon full payment of the "lease." The only
12 way to avoid incurring a penalty for either a traditional default or a "default created by
13 non-appropriation" is for Boise to fully repay the entire \$16.7 million plus accrued
14 interest up to a total of \$35 million.

15 Although the parties labeled this agreement a lease, this alone does not establish
16 the existence of one. As the Supreme Court of the United States opined:

17 What then is the true construction of the contract? The answer to this
18 question is not to be found in any name which the parties may have given
19 to the instrument, not alone in any particular provisions it contains
20 disconnected from all others, but in the ruling intention of the parties
21 gathered from all of the language they have used. It is the legal effect of
22 the whole which is to be sought for. The form of the instrument is of little
23 account.⁷³

24 Since, clearly, an agreement's substance must prevail over its form, a careful
25 study of the language of this Agreement demonstrates the parties intended to create an
26 installment purchase agreement of the premises and loan secured by municipal
27 property, even though they titled it a lease.⁷⁴

28 While Boise's financing plan is creative, regardless of how this Agreement is
29 characterized, it contemplates a purchase of property by using an installment plan and
30 directly obligates Boise to pay up to \$16,680,000.00 plus accrued interest up to a total of

31 ⁷³ *Heryford v. Davis*, 102 U.S. 235, 243-244 (1880).

⁷⁴ *See Williams*, 51 Idaho at 506, 6 P.2d at 476.

1 approximately \$35 million. By subjecting the Fairview property to potential loss, the
2 Agreement creates a contingent liability – a liability that may well be substantial. To the
3 extent Boise stands to lose its property, property it presently owns, as future re-payment
4 for the principal amount of \$16,680,000.00 plus accrued interest, the Agreement violates
5 Art. VIII, §3 of the Idaho Constitution.

6 The Court finds the Agreement to be a "lease" in form only; Boise is clearly
7 borrowing money upon the security of its Fairview property, to finance the construction
8 of a new stand alone Boise Police Department facility. The Court finds that Boise, albeit
9 in reliance on previous district court cases, is attempting to evade the application of Art.
10 VIII, §3 requiring approval by the electorate before entering into this Agreement. This is
11 not new.

12 Local governments throughout the United States have been devising such
13 schemes for quite some time and commentators clearly recognize these schemes are
14 specifically designed to avoid constitutional debt limitations.⁷⁵ The National Association
15 of Counties even has a website containing advise on how to avoid such limitations.⁷⁶ In
16 fact, a cursory review of several district court cases in the Fourth Judicial District
17 confirms that this scheme is not new to Idaho.⁷⁷

18 Although the scheme varies, at its heart, property is "leased" to the municipality
19 for a certain period, in consideration of a "lease" payment which purportedly does not
20 exceed the debt limit, with an option to purchase the property at a certain price. Clearly,
21 where the lease is truly a lease, the plan is proper. However, where the "lease"
22 payments are in fact installment payments on the purchase price and repayment of a
23 loan, the transaction should be treated as a purchase and loan, rather than a "lease,"
24 and the court should recognize that the municipality is indebted on the aggregate
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26 ⁷⁵ See 56 Am.Jur.2d MUNICIPAL CORPORATIONS, ETC., §614; Bisk, *supra* note at 22; Magnusson, *supra* note
27 at 58.

28 ⁷⁶ Jim Culotta, *Certificates of Participation: An Innovative Financing Alternative for Counties*, (1999), at
<http://www.naco.org/pubs/research/briefs/cops.cfm>.

29 ⁷⁷ While some of the parties suggest that this Court is "bound" by other district court decisions, that is not
30 the case. This Court must only follow appellate court decisions. Moreover, counsel failed to explain that
31 many of those decisions were in uncontested cases. In addition, they failed to disclose Justice Eismann's
32 decision denying Ada County Highway District's Petition to construct the West Park Center Bridge and
Curtis/Ustick roads relying on many of the same principles relied on here. See Case No. CV-OC-96-05299D

1 amount rather than on individual "lease" payments as they accrue.⁷⁸ In particular, where
2 municipal property is transferred as security for the transaction, the scheme is
3 transparent.

4 In this case, the Agreement's sale and loan nature and Boise's potential liability
5 for the whole principal is clear. There are several reasons for this. Boise's proposed
6 annual "lease" payments are indistinguishable from annual debt service; the "principal"
7 portion increases over the thirty year period and the "interest" portion fluctuates. The
8 majority of the "principal" is payable in the final years of the "lease." Furthermore, it
9 does not appear that the so-called "lease" payments are in any way related to the fair
10 market value of the property but are directly tied to the amount needed to repay the
11 costs of construction plus interest – similar to debt service payments.

12 Moreover, Boise's real property at Fairview is used as security for the "lease."⁷⁹
13 Unless a future Boise City Council fails to appropriate funding, Boise is clearly liable for
14 the aggregate principal and accrued interest over the entire thirty year period.
15 Furthermore, Boise's counsel told this Court in response to questioning that Boise
16 intended to eliminate the non-appropriation clause if the Court finds the expenditures to
17 be "ordinary and necessary." This is further evidence the parties recognized they were
18 attempting to circumvent the clear application of Idaho's constitutional debt limitations
19 and that this is not a "lease." It is borrowing by another name.

20 Unlike an ordinary lease, this is in practice non-terminable and clearly the parties
21 do not intend to ever terminate this "lease."

22 Significantly, the Court finds the Agreement's default remedies do not differ in
23 character from those available in any traditional conditional sale contract. Further, if a
24 future Boise City Council fails to appropriate funding and the Certificate Owners decide
25 to sell the Fairview project, including what was originally municipal property pledged as
26 security for the Agreement, Boise may lose its Fairview property, the newly constructed
27 Boise Police Department facility and any equity it has accrued by having made
28 payments on the "principal."

29
30 ⁷⁸ 56 Am.Jur.2d MUNICIPAL CORPORATIONS, ETC., §614.

31 ⁷⁹ In support of its Petition, Boise relies on *Idaho Code* §§50-1403(5), 50-301.

1 At the moment Boise signs this Agreement, its Fairview property is obligated up
2 to the full amount of the principal plus whatever "interest" has accrued -- at least
3 \$16,680,000.00 -- regardless of which default remedy applies. Moreover, the Certificate
4 Owners are not required to sell the property upon non-appropriation. They could decide
5 to simply re-lease the property to someone else and, thus, there would be no
6 opportunity for Boise to recoup any of its property or the value of its equity payments.

7 The only way for Boise to redeem its investment, including its property, is to
8 tender the full principal, accrued interest and \$1.00. This Agreement is essentially an
9 installment purchase agreement secured by Boise's property for the acquisition of a
10 public building, with financing and payments spread over thirty years. As such, it
11 requires voter approval.

12 Furthermore, the tax exempt status of the Agreement's "interest" payments
13 pursuant to section 103 of the Internal Revenue Code further proves that this is a
14 contract for sale or a loan and an exercise of Boise's borrowing power as opposed to a
15 "lease." In order to qualify for this tax exempt status, both the statute and case law
16 clearly require the lease contract "constitute an obligation of the governmental unit's
17 borrowing power under federal tax law. . . ." ⁸⁰

18 Unless an agreement is a conditional sale with periodic purchase payments on a
19 contract of sale, payments by local governments cannot properly be construed as tax
20 exempt interest on local government obligations.⁸¹ The provision of Revenue Acts,
21 1934, 1936, §22(b), which exempts interest on state and local government obligations
22 from income taxes, does not exempt interest paid on every type of contract or legal
23 liability incurred by a municipal corporation, but only such interest as accrued on debts
24 incurred under the borrowing power of the governmental unit.⁸² "[A]lthough the
25 agreement may take the form of a lease, the contract must contemplate a sale."⁸³

26
27
28 ⁸⁰ *Consolidated Edlson Co. v. U.S.*, 10 F.3d 68 (2nd Cir. 1993) (emphasis added).

29 ⁸¹ *Fox v. U.S.*, 551 F.2d 85 (7th Cir. 1977); *Cubic Corp. v. U.S.*, 541 F.2d 829 (9th Cir. 1976):

30 ⁸² *Holley v. U.S.*, 124 F.2d 909 (6th Cir. 1942) *cert. denied*, 62 S.Ct. 1276, 316 U.S. 685; *see also*, *Marsh Monument Co. v. U.S.*, 301 F.Supp. 1316 (E.D.Mich.1969); *State Bank of Albany v. U.S.*, 276 F.Supp. 744, *affirmed* 389 F.2d 85 (N.D.N.Y.1967).

31 ⁸³ *Brown v. City of Stuttgart*, 847 S.W.2d 710, 713 (Ark. 1993), n. 74.

1 Finally, although not determinative, it is noteworthy that some authors write that
2 typically agreements like this one are treated as a debt equal to the asset's total
3 purchase price by both accountants and by public officials.⁸⁴

4 Therefore, while these financing arrangements may be in the taxpayers' best
5 interest and less costly to them in the long run, these financing arrangements run afoul
6 of the state constitution. In addition, there is no evidence that voter approval would
7 preclude Boise from using a similar financing method, thus taking advantage of these
8 alleged savings. Furthermore, by ruling against Boise, the Court is not suggesting that
9 the Boise Police Department facility is not desirable or proper. The Court's role is not to
10 determine the desirability of the project. The Court, however, is required to
11 independently determine whether the proposal complies with constitutional and statutory
12 limits.

13 It is not appropriate for the Court to amend the State constitution by judicial fiat
14 simply because it finds the proposal in the taxpayers' best interests. That is not, and
15 should not be, the Court's role. "The fundamental power still remains in the people
16 controllingly expressed by them in the Constitution, binding alike on all."⁸⁵

17 If courts do not fulfill their responsibility to disapprove such subterfuges, there is
18 literally no local capital project which will be subject to the constitutional debt limitations.
19 Taxpayers will have no recourse against increased tax burdens associated with
20 municipal capital projects financed by such schemes. If the electorate wishes to amend
21 the Idaho Constitution to allow local governments to make such expenditures without the
22 people's express approval, it can do so. Until that time, however, it is the Court's
23 responsibility to strictly enforce the limitations. The Court should not be a party to
24 schemes designed to circumvent the constitutional debt limit.

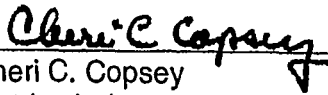
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26
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28
29 ⁸⁴ Bisk, *supra* note at 22, p. 540-542; Magnusson, *supra* note at 58, p 393-394.

30 ⁸⁵ *Straughan*, 53 Idaho at 501, 24 P.2d at 323 (citing in support *Golden Gate Highway Dist. v. Canyon*
31 *County*, 45 Idaho 406, 262 P. 1048 (1928); *Bolse-Payette Lumber Co. v. Challis Ind. School Dist.*, 46
32 Idaho, 403, 268 P. 26 (1928)).

1 Thus, the Court finds this Agreement creates a liability for which Boise's current
2 budget does not provide. Therefore, this expenditure must receive voter approval and
3 the Court denies Boise's Petition.

4 **IT IS SO ORDERED.**

5 Dated this 26th day of August, 2002.

6
7 
8 Cheri C. Copsey
9 District Judge
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CERTIFICATE OF MAILING

I hereby certify that on this 26th day of August, 2002, I mailed (served) a true and correct copy of the within instrument to:

SUSAN LYNN MIMURA
Boise City Attorney
JAMES F. WICKHAM
Boise City Deputy Attorney
101 S. Capitol Blvd., 7th Floor
Boise, Idaho 83702

RICHARD SKINNER
CHARLES FAWCETT
DENNIS GIBALA
ROBERT KYTE
Skinner Fawcett
P.O. Box 700
Boise, Idaho 83701-0700

DAVID R. FRAZIER
1921 Cataldo Drive
Boise, Idaho 83705

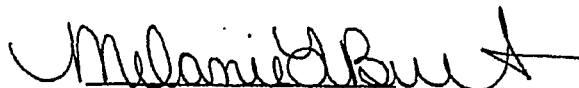
NICOLE FORNSHELL (713 - 3836)
1720 N Raymond #1
Boise, Idaho 83704

GENE SUMMA
2921 Pleasanton
Boise, Idaho 83702

AIMEE ROBBINS (353 - 5493)
1720 N Raymond #1
Boise Idaho 83704

STARR KELSO
P.O. Box 1312
Coeur d'Alene, Idaho 83816-1312

J. DAVID NAVARRO
Clerk of the District Court


Deputy Clerk

DECISION DENYING PETITION
CASE NO. CVOC 0202395D

JAN 26 2015

CHRISTOPHER D. RICH, Clerk
By STACEY LAFFERTY
DEPUTY

Donald E. Knickrehm, ISB No. 1288
GIVENS PURSLEY LLP
601 W. Bannock Street
Boise, ID 83702
Telephone: (208) 388-1200
Facsimile: (208) 388-1300

Nicholas G. Miller, ISB No. 3041
S.C. Danielle Quade, ISB No. 6363
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 W. Main Street, Suite 1000
Boise, ID 83702-5883
Telephone: (208) 344-6000
Facsimile: (208) 954-5285

Attorneys for Petitioner
Greater Boise Auditorium District

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF:

GREATER BOISE AUDITORIUM
DISTRICT,

PETITIONER.

)
) Case No. CV-OT-2014-23695
)
) AFFIDAVIT OF POSTING, MAILING AND
) PUBLISHING OF NOTICE OF PUBLIC
) HEARING AND OF POSTING AND
) PUBLISHING NOTICE OF FILING
) PETITION FOR JUDICIAL
) CONFIRMATION AND NOTICE OF
) HEARING THEREON

Judy Peavey-Derr, being first duly sworn under oath, deposes and says:

1. I am over the age of eighteen (18) years and am a resident of Ada County, Idaho.
2. I make this affidavit of my own personal knowledge and as the Secretary of the

Greater Boise Auditorium District (the "District"), based in part on a review of the records of the

AFFIDAVIT OF POSTING, MAILING, AND PUBLISHING OF NOTICE OF PUBLIC HEARING
AND OF POSTING AND PUBLISHING NOTICE OF FILING PETITION FOR JUDICIAL
CONFIRMATION AND NOTICE OF HEARING THEREON - 1

58

District that have been kept in the course of the District's regular business activity, of which I share custodianship.

The District maintains records in the ordinary course of its business. These records include, but are not limited to, copies of agreements, court orders, legal documents, and other records relevant to the formation and continued operation of the District (the "Records"). The Records are made or filed at or near the time of each event recorded, by someone with personal knowledge of the events, or from information transmitted by someone with personal knowledge of the events, or from information transmitted by someone with personal knowledge of each event and a business duty to set forth information in a report or record. As the Secretary of the District, I am directly and personally familiar with the system used to make and store the Records. I, as well as all of the employees and officers of the District, have a business duty to accurately set forth information in the Records; to set forth that information in the Records at or near the time of the occurrence; and to file all of the applicable Records in the District file related to the particular issue. The Records and information referenced in this Affidavit were obtained from the District files maintained in the ordinary course of the District's business, pursuant to the procedures and system set forth above.

3. On October 15, 2014, the District adopted a resolution calling for a public hearing, as required by Idaho Code Section 7-1304 (the "1304 Hearing"), to consider whether it should adopt a resolution authorizing the filing of its Petition for Judicial Confirmation (the "Petition") requesting judicial examination and determination of the validity and authority of the District to enter into a certain lease agreement, renewable annually through appropriation (the

AFFIDAVIT OF POSTING, MAILING, AND PUBLISHING OF NOTICE OF PUBLIC HEARING
AND OF POSTING AND PUBLISHING NOTICE OF FILING PETITION FOR JUDICIAL
CONFIRMATION AND NOTICE OF HEARING THEREON - 2

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“Lease Agreement”), to finance the acquisition of condominium units containing a new ballroom facility, related kitchen and ancillary facilities along with related soft costs and equipment (the “Financed Project”), to improve and expand its existing convention center and public event facilities in downtown Boise (the “Boise Centre”). The District caused notice of the 1304 Hearing to be published far-forward in the main news section of *The Idaho Statesman*, the official newspaper of general circulation in the District, on October 20, 2014, which was more than 15 days prior to November 5, 2014, the date of the 1304 Hearing. No persons requested notice of the 1304 Hearing pursuant to Idaho Code Section 7-1304(3). The District also posted notice of the 1304 Hearing at or near the main door of the District’s administrative office on October 15, 2014. A copy of the notice of the 1304 Hearing published in *The Idaho Statesman* is attached hereto as **Exhibit A** and incorporated herein, as evidenced in the Affidavit of Publication provided by *The Idaho Statesman* attached hereto as **Exhibit B** and incorporated herein by this reference.

4. The District conducted the 1304 Hearing as scheduled on November 5, 2014. On November 20, 2014, which is at least 14 days after the 1304 Hearing, the District adopted a resolution authorizing the filing of the Petition and, subject to confirmation by the District Court, authorizing the Lease Agreement.

5. The Petition was filed on December 19, 2014.

6. Pursuant to the posting requirements of Section 7-1306(2)(b), Idaho Code, since at least January 22, 2015, the District caused to be posted the Notice of Filing Petition for Judicial Confirmation and Notice of Hearing Thereon in the form attached hereto as **Exhibit C**

AFFIDAVIT OF POSTING, MAILING, AND PUBLISHING OF NOTICE OF PUBLIC HEARING
AND OF POSTING AND PUBLISHING NOTICE OF FILING PETITION FOR JUDICIAL
CONFIRMATION AND NOTICE OF HEARING THEREON - 3

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and incorporated herein by this reference, as required by Section 7-1306(1), Idaho Code, at the main door of the administrative office of the District located at 850 West Front Street, Boise, Idaho, and the Notice will remain continuously posted at that location from January 22, 2015, until February 25, 2015, the date of the hearing on the Petition.

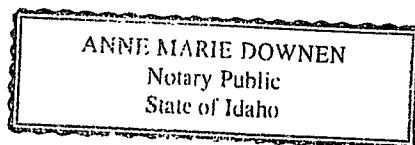
7. The Notice of Filing Petition for Judicial Confirmation and Notice of Hearing Thereon has been submitted to *The Idaho Statesman* for publication on February 2, 2015, February 9, 2015 and February 16, 2015 in the paper's main news section far forward in compliance with the publication requirements of Section 7-1306(2)(a), Idaho Code. A copy of the publication Order Confirmation is attached hereto as **Exhibit D** and incorporated herein by this reference. An Affidavit of Publication will be filed with the Court once publication is complete.


Further, your affiant sayeth naught.


Judy Peavey-Derr

STATE OF IDAHO)
) ss.
County of Ada)

SUBSCRIBED AND SWORN before me this 23 day of January, 2015.




Notary Public for Idaho
Residing at Emmett
My commission expires 07/03/2020

AFFIDAVIT OF POSTING, MAILING, AND PUBLISHING OF NOTICE OF PUBLIC HEARING
AND OF POSTING AND PUBLISHING NOTICE OF FILING PETITION FOR JUDICIAL
CONFIRMATION AND NOTICE OF HEARING THEREON - 4

05125.0016.7108344.3

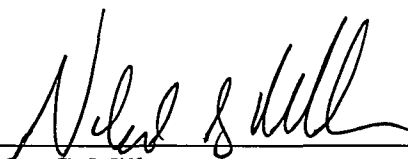
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of January, 2015, I caused to be served a true copy of the foregoing AFFIDAVIT OF POSTING, MAILING AND PUBLISHING OF NOTICE OF PUBLIC HEARING AND OF POSTING AND PUBLISHING NOTICE OF FILING PETITION FOR JUDICIAL CONFIRMATION AND NOTICE OF HEARING THEREON by the method indicated below, and addressed to each of the following:

John L. Runft, Esq.
Runft & Steele Law Offices, PLLC
1020 W. Main St., Ste. 400
Boise, ID 83702

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ E-mail
☐ Telecopy



Nicholas G. Miller

EXHIBIT A

NOTICE OF 1304 HEARING

NOTICE OF PUBLIC HEARING

NOTICE OF HEARING TO CONSIDER A RESOLUTION AUTHORIZING THE FILING OF AN AMENDED OR NEW PETITION FOR JUDICIAL CONFIRMATION UNDER THE IDAHO JUDICIAL CONFIRMATION LAW GREATER BOISE AUDITORIUM DISTRICT, STATE OF IDAHO

THIS NOTICE OF HEARING is provided pursuant to Idaho Code Section 7-1304. Notice is hereby given that the Board of Directors (the "Board") of the Greater Boise Auditorium District, Ada County, State of Idaho (the "District") shall conduct a public hearing to consider the adoption of a resolution authorizing filing either (a) an amendment (the "Amendment") to the District's Petition for Judicial Confirmation (the "Initial Petition") filed on June 11, 2014 as Case No. CV OT 1411320 under Title 7, Chapter 13 of the Idaho Code, in the Fourth Judicial District Court of the State of Idaho (the "District Court"), OR (b) in the District Court, a new petition for judicial confirmation action (the "New Petition"). The public hearing will be held on November 5, 2014, at 1:00 p.m., at District's administrative offices, 850 W. Front Street, Boise, Idaho.

The Initial Petition was filed in the District Court to obtain judicial examination and determination of the validity of a proposed lease obligation (the "Lease") of the District to lease and/or finance the purchase of certain condominium units containing a new ballroom facility, related kitchen, and ancillary facilities in the Centre Building to be constructed south of the existing U.S. Bank office tower in close proximity to the District's existing facilities, along with related soft costs and equipment, to fund a reserve fund, and to pay certain costs of issuing the Lease. The District Court denied the Initial Petition. The Lease has been revised in response to the District Court's denial (the "Revised Lease"), and at the public hearing, public testimony will be heard as to whether the Board should adopt a resolution authorizing the District to file the Amendment, or in the alternative the New Petition, to obtain judicial examination and determination of the validity of the Revised Lease. The District Court will be requested to determine that the Revised Lease is not an indebtedness or liability of the District as defined under Article VIII, Section 3 of the Idaho Constitution, that the District may enter into the Revised Lease without an election, and that the Revised Lease may be payable with the District's receipts from hotel/motel room tax collection, received by the District pursuant to Idaho Code Section 67-4914 and other revenues of the District.

Copies of the proposed Amendment and Revised Lease may be examined at the administrative offices of the District, located at 850 W. Front Street, Boise, Idaho, during regular business hours 8:00 a.m. to 5:00 p.m.

DATED: October 20, 2014

EXHIBIT B

AFFIDAVIT OF PUBLICATION - 1304 HEARING NOTICE

IDAHO STATESMAN

P.O. BOX, BOISE, ID 83707

LEGAL PROOF OF PUBLICATION

Account # 263959	DTI# 1346323	Identification LEGAL NOTICE	Amount \$577.50
Attention		P.O. # 628156	Run Dates October 20, 2014
HAWLEY TROXELL ENNIS HAWLEY LLP / LEGAL PO BOX 1617 BOISE, ID 83701-1617			Number of Lines 3x7 Affidavit 1 Legal #

KATHERINE SCHELLENBERG, being duly sworn, deposes and says: That she is the Principal Clerk of *The Idaho Statesman*, a daily newspaper printed and published at Boise, Ada County, State of Idaho, and having a general circulation therein, and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto: that said notice was published in far forward in the Main section as required by Idaho Code Section 7-130b

ONE

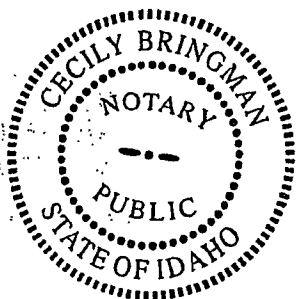
☐ consecutive weekly ☒ single
☐ consecutive daily ☐ odd skip
 insertion(s)
 beginning issue of: October 20, 2014
 ending issue of: October 20, 2014

Katherine Schellenberg

STATE OF IDAHO)
).ss
COUNTY OF ADA)

On this 22 day of October in the year of 2014
before me, a Notary Public, personally appeared before me
Katherine Schellenberg known or identified to me to be the person
whose name subscribed to the within instrument, and being
by me first duly sworn, declared that the statements therein
are true, and acknowledged to me that she executed the same.

Cecily Bringman
Notary Public for Idaho
Residing at: Boise, Idaho
My Commission expires 7-27-15



000345

LocalNews

IDAHO STATESMAN • IDAHOSTATESMAN.COM

NOTICE OF PUBLIC HEARING

NOTICE OF HEARING TO CONSIDER A RESOLUTION AUTHORIZING THE FILING OF AN AMENDED OR NEW PETITION FOR JUDICIAL CONFIRMATION UNDER THE IDAHO JUDICIAL CONFIRMATION LAW GREATER BOISE AUDITORIUM DISTRICT, STATE OF IDAHO

THIS NOTICE OF HEARING is provided pursuant to Idaho Code Section 7-1304. Notice is hereby given that the Board of Directors (the "Board") of the Greater Boise Auditorium District, Ada County, State of Idaho (the "District") shall conduct a public hearing to consider the adoption of a resolution authorizing filing either (a) an amendment (the "Amendment") to the District's Petition for Judicial Confirmation (the "Initial Petition") filed on June 11, 2014 as Case No. CV OT 1411320 under Title 7, Chapter 13 of the Idaho Code, in the Fourth Judicial District Court of the State of Idaho (the "District Court"), OR (b) in the District Court, a new petition for judicial confirmation action (the "New Petition"). The public hearing will be held on November 5, 2014, at 1:00 p.m., at District's administrative offices, 850 W. Front Street, Boise, Idaho.

The Initial Petition was filed in the District Court to obtain judicial examination and determination of the validity of a proposed lease obligation (the "Lease") of the District to lease and/or finance the purchase of certain condominium units containing a new ballroom facility, related kitchen, and ancillary facilities in the Centre Building to be constructed south of the existing U.S. Bank office tower in close proximity to the District's existing facilities, along with related soft costs and equipment, to fund a reserve fund, and to pay certain costs of issuing the Lease. The District Court denied the Initial Petition. The Lease has been revised in response to the District Court's denial (the "Revised Lease"), and at the public hearing, public testimony will be heard as to whether the Board should adopt a resolution authorizing the District to file the Amendment, or in the alternative the New Petition, to obtain judicial examination and determination of the validity of the Revised Lease. The District Court will be requested to determine that the Revised Lease is not an indebtedness or liability of the District as defined under Article VIII, Section 3 of the Idaho Constitution, that the District may enter into the Revised Lease without an election, and that the Revised Lease may be payable with the District's receipts from hotel/motel room tax collection, received by the District pursuant to Idaho Code Section 67-4914 and other revenues of the District.

Copies of the proposed Amendment and Revised Lease may be examined at the administrative offices of the District, located at 850 W. Front Street, Boise, Idaho, during regular business hours 8:00 a.m. to 5:00 p.m.

DATED: October 20, 2014

EXHIBIT C

**NOTICE OF FILING PETITION FOR JUDICIAL CONFIRMATION
AND NOTICE OF HEARING THEREON**

Donald E. Knickrehm, ISB No. 1288
GIVENS PURSLEY LLP
601 W. Bannock Street
Boise, ID 83702
Telephone: (208) 388-1200
Facsimile: (208) 388-1300

Nicholas G. Miller, ISB No. 3041
S.C. Danielle Quade, ISB No. 6363
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 W. Main Street, Suite 1000
Boise, ID 83702-5883
Telephone: (208) 344-6000
Facsimile: (208) 954-5285

Attorneys for Petitioner
Greater Boise Auditorium District

NO. _____
FILED
A.M. _____ P.M. _____

JAN 20 2015

CHRISTOPHER D. RICH, Clerk
By TENILLE RAD
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF:

GREATER BOISE AUDITORIUM
DISTRICT,

PETITIONER.

)
) Case No. CV-OT-2014-23695
)
) NOTICE OF FILING PETITION FOR
) JUDICIAL CONFIRMATION AND NOTICE
) OF HEARING THEREON
)
)
)
)
)
)

NOTICE IS HEREBY GIVEN that Petitioner, Greater Boise Auditorium District, a public body organized and operating as an auditorium district pursuant to Idaho Code Title 67, Chapter 49 (hereinafter referred to as the "District") has filed its Petition for Judicial Confirmation in the above matter (the "Petition") pursuant to the Idaho Judicial Confirmation

NOTICE OF FILING PETITION FOR JUDICIAL CONFIRMATION AND NOTICE OF HEARING
THEREON - 1

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Law, Idaho Code § 7-1301 *et seq.*, requesting a judicial confirmation and determination of the power and authority of the District to enter into a Lease Agreement (Annual Appropriation) (the "Lease Agreement") to finance the acquisition of certain condominium units containing a new ballroom facility, related kitchen and ancillary facilities along with related soft costs and equipment (the "Financed Project"), to improve and expand its existing convention center and public event facilities in downtown Boise known as the "Boise Centre," based on the finding that the Lease Agreement is not an indebtedness or liability prohibited under Article VIII, §3 of the Idaho Constitution. The initial term of the Lease Agreement will end at the conclusion of the District's fiscal year following commencement, and will be renewable for additional terms of one year only upon appropriation, budgeting and affirmative notice of the intent to renew the Lease Agreement by the District. The Petitioner estimates that the cost of the Financed Project will be approximately \$19,091,084, plus related soft costs and equipment, for a total Financed Project cost of approximately \$21,236,400, plus related reserves and financing costs.

The District has entered into an agreement with the Urban Renewal Agency of Boise City, Idaho, aka Capital City Development Corporation (the "Agency"), pursuant to which the Agency agrees to assist with the financing of the Financed Project. The District and the Agency have agreed that the District will assign, and the Agency will accept the assignment of, the District's right to purchase the Financed Project under the master development agreement between the District and the developer of the Financed Project. The Agency intends to issue a lease revenue note (the "Note") to finance its purchase of the Financed Project. Once purchased, the Agency will then lease the Financed Project to the District pursuant to the Lease Agreement. The Note will be repaid by the District's lease payments under the Lease Agreement. The

District will pay lease payments under the Lease Agreement using a portion of the annual receipts from hotel/motel room sales tax levied and collected by the District pursuant to Idaho Code Section 67-4917B. Once the Note is paid in full, the Lease Agreement terminates and the Financed Project may be purchased by the District for a nominal amount.

The Lease Agreement is more particularly described in the Petition and Resolution of the District approving the Petition adopted on November 20, 2014 (the "Resolution"). Full and complete copies of the Petition, the Lease Agreement and the Resolution may be examined at the District's administrative offices located at 850 W. Front Street, Boise, Idaho.

NOTICE IS FURTHER GIVEN that a hearing on the Petition shall be held on February 25, 2015, at 3:00 p.m. in the District Court at the Ada County Courthouse, 200 W. Front Street, Boise, Idaho before the Honorable Lynn G. Norton.

WITNESS my hand and the seal of the Court this 20 day of January, 2015.

CLERK OF THE COURT

CHRISTOPHER D. RICH
TENILLE RAD

By:

Deputy Clerk

SEAL

EXHIBIT D

**PUBLICATION ORDER CONFIRMATION -
NOTICE OF FILING PETITION FOR JUDICIAL CONFIRMATION
AND NOTICE OF HEARING THEREON**

Idaho Statesman

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Payor Customer

HAWLEY TROXELL ENNIS HAWLEY

Customer Account

263959

Payor Account

263959

Customer Address

PO BOX 1617, ,
BOISE ID 83701-1617 USA

Payor Address

PO BOX 1617, ,
BOISE ID 83701-1617 USA

Customer Phone

208-344-6000

Payor Phone

208-344-6000

Sales Rep.

jhlldreth@idahostatesman.com

Order Taker

kschellenb@idahostatesman.com

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IWOV-DMSMSG1.FID628		

<u>Tear Sheets</u>	<u>Proofs</u>	<u>Affidavits</u>
1	1	1

<u>Net Amount</u>	<u>Tax Amount</u>	<u>Total Amount</u>
\$1,732.50	\$0.00	\$1,732.50

<u>Payment Amt</u>	<u>Amount Due</u>
\$0.00	\$1,732.50

<u>Ad Number</u>	<u>Ad Size</u>	<u>Color</u>
0001528014-01	3.0 X 7.0000"	Black+3

<u>Product Information</u>	<u># Inserts</u>	<u>Cost</u>
<u>Placement/Classification</u>		
<u>Position</u>		
<u>Run Dates</u>		
<u>Run Schedule Invoice Text</u>		

BOI-Idaho Statesman:Print:	3	\$1,732.50
BOI-Main - Boise Main Section		
BOI-Main P2 - 3-Page 2 or Page 3		
2/2/2015, 2/9/2015, 2/16/2015		

JAN 26 2015

CHRISTOPHER D. RICH, Clerk
By STACEY LAFFERTY
DEPUTY

Donald E. Knickrehm, ISB No. 1288
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Boise, ID 83702-5883
Telephone: (208) 344-6000
Facsimile: (208) 954-5285

Attorneys for Petitioner
Greater Boise Auditorium District

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF:)
	) Case No. CV-OT-2014-23695
)
GREATER BOISE AUDITORIUM	) AFFIDAVIT OF LINDA K. ARMSTRONG,
DISTRICT,	) AS A REPRESENTATIVE OF WELLS
	) FARGO BANK, N.A. RE: PETITION FOR
PETITIONER.	) JUDICIAL CONFIRMATION
)

Linda K. Armstrong, being first duly sworn under oath, deposes and says:

1. I am a Vice President / Senior Relationship Manager for Wells Fargo Bank, N.A. ("Wells Fargo") in the Wells Fargo Boise office. I graduated Summa Cum Laude from Idaho State University with a B.A. in both finance and management and organization and am an honors graduate of Pacific Coast Banking School through the University of Washington. I am a past President of the Idaho Chapter of Risk Management Associates and currently Chairman of the Board of a local non-profit, The Jesse Tree of Idaho. I have been employed by Wells Fargo and

AFFIDAVIT OF LINDA K. ARMSTRONG, AS A REPRESENTATIVE
OF WELLS FARGO BANK, N.A. RE: PETITION FOR JUDICIAL
CONFIRMATION - 1

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predecessor banking organizations in Idaho for approximately 30 years receiving several banking performance-based honors including the Commercial Banking Pinnacle Award in 2013. During my tenure I have served in branch management, commercial and agricultural lending, and credit administration (managing department level credit audits and credit due-diligence of several bank acquisitions). As Senior Relationship Manager, I handle government, commercial, public entities and complex corporate loan portfolios.

2. This Affidavit is submitted as a representative of Wells Fargo Bank, N.A. in connection with the Petition for Judicial Confirmation (the "Petition") filed by Greater Boise Auditorium District (the "District"). Capitalized terms used in this Affidavit have the meaning assigned to such terms in the Petition.

3. Wells Fargo has purchased bonds, notes and other obligations of public agencies, including leases and notes supported by lease payments, in which the obligation of the public agency is subject to the proviso that the public agency may renew its obligation on an annual basis through a decision to budget and appropriate funds for the expenditure in each year. In such transactions, Wells Fargo has accepted the risk that the public agency will not renew the lease or obligation.

4. In October 2014, Wells Fargo received from the District and the Urban Renewal Agency of Boise City, Idaho aka Capital City Development Corporation (the "Agency") a request for proposals (the "RFP") to solicit interest from certain financial firms in financing the Financed Project. Wells Fargo responded to the RFP, resulting in the execution of a proposed term sheet, dated December 11, 2014, a copy of which is attached to the Petition as Exhibit C (the "Term Sheet").

5. The Term Sheet describes that the District's obligation to make payments under the Lease Agreement is subject to annual renewal and appropriation and that the District may terminate the Lease Agreement and its obligation to pay thereunder at the end of any annual term with no further obligation. Among the "Conditions Precedent to Closing" in the Term Sheet is "7) Receipt of Judicial Confirmation, satisfactory to Bank, of the District's ability under the Idaho Constitution to enter into the Lease."

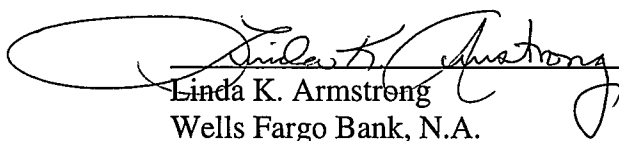
6. The Term Sheet quotes an "indicative" interest rate for both a 7 year term--2.25%-- and a 10-year term--2.65%. "Indicative" in this context means the rate of interest that Wells Fargo would propose if the financing was occurring under interest rate market conditions prevailing at the date of the Term Sheet. The Term Sheet provides for annual payments on the Note for a 7-year term of \$1,472,089, and for a 10-year term of \$1,528,900. I have reviewed Paragraph 27 of the Affidavit of Patrick Rice, filed in support of the Petition relating to the District's annual revenues. I have also personally reviewed the District's financial statements for fiscal year ended November 30, 2013. Historically, the District's annual revenue and income from hotel/motel room tax collections has been in excess of the amounts listed above as the annual payments the District would make under the Lease Agreement.

7. Wells Fargo has reserved the right to make a final credit decision on the financing at the time the actual financing occurs, and the actual interest rates will be dependent on market conditions at the time the financing occurs. However, Wells Fargo has reviewed the Lease Agreement and acknowledges that the District has incorporated into the Lease Agreement the terms and provisions that Wells Fargo requires in connection with the purchase of the Note and such terms reflect the terms and provisions set forth in the Term Sheet. For example, the requirement for incurring additional indebtedness in Section 8.10 of the Lease Agreement was

specifically negotiated by Wells Fargo with the Agency and the District in preparation of the Term Sheet.

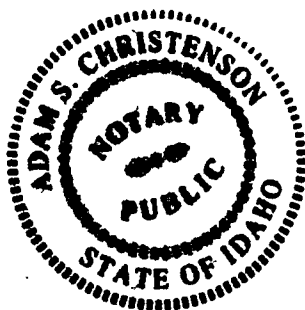
8. In addition, Wells Fargo acknowledges that certain provisions that relate to the central issue before the Court in ruling on the Petition-- namely, the annual appropriation feature of the Lease Agreement embodied in Section 5.1 of the Lease Agreement--cannot be altered. Wells Fargo will not require any additional condition or covenant in the Lease Agreement or any other documentation that would create obligations that extend beyond any fiscal year of the District.


Further your affiant sayeth naught.


Linda K. Armstrong
Wells Fargo Bank, N.A.
VP/Senior Relationship Manager

STATE OF IDAHO)
) ss.
County of Ada)

SUBSCRIBED AND SWORN before me this 23rd day of January, 2015.



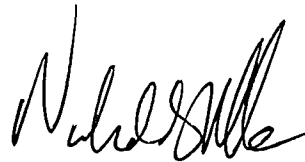

Notary Public for Idaho
Residing at Boise, ID
My commission expires 1/8/2020

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of January, 2015, I caused to be served a true copy of the foregoing AFFIDAVIT OF LINDA K. ARMSTRONG, AS A REPRESENTATIVE OF WELLS FARGO BANK, N.A. RE: PETITION FOR JUDICIAL CONFIRMATION by the method indicated below, and addressed to each of the following:

John L. Runft, Esq.
Runft & Steele Law Offices, PLLC
1020 W. Main St., Ste. 400
Boise, ID 83702

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ E-mail
☐ Telecopy



Nicholas G. Miller

CHRISTOPHER D. RICH, Clerk
By STACEY LAFFERTY
DEPUTY

Attorneys for Petitioner
Greater Boise Auditorium District

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

PETITIONER.

AFFIDAVIT OF JOHN BRUNELLE IN
SUPPORT OF PETITION FOR JUDICIAL
CONFIRMATION

Corporation (the "Agency") as the Executive Director of the Agency. I have served in this capacity for approximately a year and half.

3. I make this affidavit based upon my own personal knowledge, which is in part based on a review of the records of the Agency that have been kept in the course of the Agency's regular business activity, of which I share custodianship.

The Agency maintains records in the ordinary course of its business. These records include, but are not limited to, copies of agreements, court orders, legal documents, and other records relevant to the formation and continued operation of the Agency (the "Records"). The Records are made or filed at or near the time of each event recorded, by someone with personal knowledge of the events, or from information transmitted by someone with personal knowledge of the events, or from information transmitted by someone with personal knowledge of each event and a business duty to set forth information in a report or record. As the Executive Director of the Agency, I am directly and personally familiar with the system used to make and store the Records. I, as well as all of the employees and officers of the Agency, have a business duty to accurately set forth information in the Records that are part of the Agency's files; to set forth that information in the Records at or near the time of the occurrence; and to file all of the applicable Records in the Agency file related to the particular issue. The Records and information referenced in this Affidavit were obtained from the Agency files maintained in the ordinary course of the Agency's business, pursuant to the procedures and system set forth above. The Records were not produced in anticipation of trial, but instead were produced as part of the ordinary course of business.

4. By virtue of my duties at the Agency, I am involved with the business operations and management of the Agency.

5. The Agency is an urban renewal agency of the City of Boise City, Idaho,

organized and operating pursuant to Title 50, Chapters 20 and 29, Idaho Code (the “Urban Renewal Law”).

6. The Greater Boise Auditorium District (the “District”) desires to enter into a lease agreement to finance the acquisition of condominium units containing a new ballroom facility, related kitchen and ancillary facilities along with related soft costs and equipment (the “Financed Project”), to improve and expand the Boise Centre which the District currently operates.

7. In order to finance the purchase of the Financed Project, including all required reserves and financing costs, the District has contracted with the Agency. On or about December 19, 2014, the District and the Agency entered into an Amended and Restated Development Agreement (the “Development Agreement”) pursuant to which the Agency has agreed to employ certain of its statutory powers in connection with the financing of the Financed Project. A true and correct copy of the Development Agreement is attached as Exhibit A to the Petition.

8. Pursuant to the Development Agreement, the District and the Agency have agreed that the District will assign, and the Agency will accept the assignment of, the District’s right to purchase the Financed Project from K.C. Gardner Company, L.C. (the “Developer”), and, following successful completion of the Judicial Confirmation Proceedings, the District and the Agency will execute and deliver an Assignment and Assumption Agreement in substantially the form attached to the Development Agreement (the “Assignment”) to so provide. In order to provide the funds needed for the Agency’s purchase of the Financed Project, the Agency has agreed to issue a promissory note to Wells Fargo (the “Note”), as further described below.

9. Using the proceeds of the Note, the Agency will purchase the Financed Project from the Developer pursuant to the Assignment and thereby the Agency shall become the owner of the Financed Project.

10. Following the Agency’s purchase of the Financed Project, the Agency will lease

the Financed Project to the District under a Lease Agreement (Annual Appropriation) (the "Lease Agreement"). The Lease Agreement has been drafted and will be finalized following favorable ruling from this Court on the Petition. A true and correct copy of the proposed Lease Agreement is attached as Exhibit B to the Petition.

11. The Note is payable by the Agency solely from lease payments paid by the District to the Agency under the Lease Agreement (the "Lease Payments"). The Note will be issued for an amount sufficient to provide funds to purchase the Financed Project, and the Lease Agreement, in turn, will provide for Lease Payments sufficient to enable the Agency to pay all principal and interest coming due on the Note.

12. The Lease Agreement is subject to annual appropriation and budgeting of funds by the District. The initial term of the Lease Agreement begins on the "Commencement Date" as defined in the Lease Agreement and, if not renewed by the District, will end at the conclusion of the District's fiscal year, November 30, following the Commencement Date. The Lease Agreement is renewable by the District for subsequent one-year terms only upon appropriation, budgeting and affirmative notice by the District of its intent to renew the same. The District's exercise of its unilateral option to renew continues the Lease Agreement for an additional Renewal Term (as defined in the Lease Agreement) on the same terms, conditions and covenants. The Agency is bound by the Lease Agreement for as long as the District renews with no option to terminate except in the event of a default by the District.

13. If the District renews the Lease Agreement for sufficient years that the Note is paid in full, the Lease Agreement terminates and the District has the right to purchase the Financed Project for a nominal sum. The District also has the right to purchase the Financed Project and thus terminate the Lease Agreement at any time upon payment of a purchase price

equal to the unpaid principal and interest due on the Note.

14. If the District elects not to renew the Lease Agreement for an additional Renewal Term (an "Event of Nonrenewal"), the Lease Agreement shall terminate on November 30 of the then current year and the District shall have no further indebtedness or liability thereunder.

15. Pursuant to Section 8.12 of the Lease Agreement, the District shall commit \$250,000 to a "Lease Contingency Fund" to serve as the sole source of payment for all claims of the Agency under the Lease Agreement, including such claims as may survive the District's termination of the Lease Agreement. The Agency has no other recourse against the District except to such Fund. If funds remain in the Lease Contingency Fund five (5) years after the termination of the Lease, such funds shall be released to the District.

16. Additionally, as required by Section 6.2 of the Lease Agreement, the District must maintain commercial general liability insurance occurrence coverage for the Financed Project. Accordingly, the District shall have insurance coverage for any incident occurring during the Lease Term (as defined in the Lease Agreement), even following an Event of Nonrenewal.

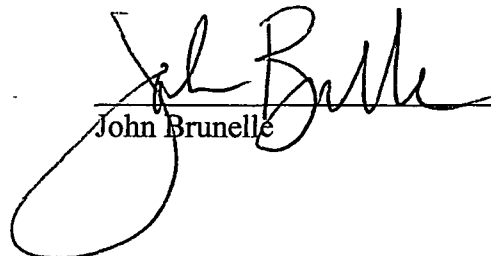
17. In connection with the financing of the Financed Project, the Agency will grant to the District a separate and additional option to purchase the Financed Project for a nominal sum once the Note has been paid in full (the "Option"). The Option shall survive termination of the Lease Agreement in an Event of Nonrenewal.

18. In October 2014, the District and the Agency jointly issued a request for proposals (the "RFP") to solicit interest from certain financial firms in financing the Financed Project. The request for proposals identified the transaction structure described above--i.e, that the Agency would issue the Note payable solely from the revenues derived from the District's Lease Payments under the Lease Agreement. As a result of the RFP, Wells Fargo Bank, N.A., Boise office ("Wells Fargo") proposed a term sheet, a true and correct copy of

which is attached to the Petition as Exhibit C (the "Term Sheet") specifying the terms and conditions upon which Wells Fargo would purchase the Agency's Note to provide financing for the Financed Project plus related reserves and financing costs. The Agency approved the Term Sheet and authorized the execution of the same at the meeting of its governing board held on December 15, 2014.

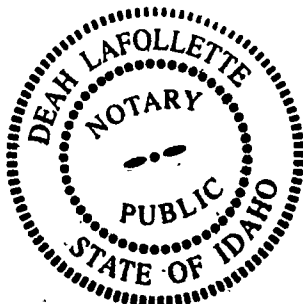
19. The Term Sheet acknowledges that the District's payment of Rent (as defined in the Lease Agreement) is subject to annual renewal and appropriation and that the District may terminate the Lease Agreement at the end of any annual term with no further obligation. To secure repayment of the Note, the Agency will grant to Wells Fargo a Deed of Trust and Assignment of Rents ("Deed of Trust") which shall (a) assign to the bank the Lease Payments paid by the District under the Lease Agreement and (b) grant a first lien on the Financed Project, until the Note has been fully repaid. The Deed of Trust will be junior and subject to the Option held by the District.

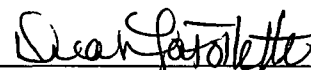
Further your affiant sayeth naught.


John Brunelle

STATE OF IDAHO)
) ss.
County of Ada)

SUBSCRIBED AND SWORN TO before me this 22 day of January, 2015.



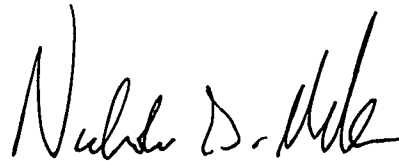

Notary Public for Idaho
Residing at 121 N 9th Street, Boise
My commission expires 8-17-2017

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of January, 2015, I caused to be served a true copy of the foregoing AFFIDAVIT OF JOHN BRUNELLE IN SUPPORT OF PETITION FOR JUDICIAL CONFIRMATION by the method indicated below, and addressed to each of the following:

John L. Runft, Esq.
Runft & Steele Law Offices, PLLC
1020 W. Main St., Ste. 400
Boise, ID 83702

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ E-mail
☐ Telecopy



Nicholas G. Miller

JAN 26 2015

CHRISTOPHER D. RICH, Clerk
By STACEY LAFFERTY
DEPUTY

Donald E. Knickrehm, ISB No. 1288
GIVENS PURSLEY LLP
601 W. Bannock Street
Boise, ID 83702
Telephone: (208) 388-1200
Facsimile: (208) 388-1300

Nicholas G. Miller, ISB No. 3041
S.C. Danielle Quade, ISB No. 6363
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 W. Main Street, Suite 1000
Boise, ID 83702-5883
Telephone: (208) 344-6000
Facsimile: (208) 954-5285

Attorneys for Petitioner
Greater Boise Auditorium District

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF:)
) Case No. CV-OT-2014-23695
)
GREATER BOISE AUDITORIUM) AFFIDAVIT OF DAVID WALI IN
DISTRICT,) SUPPORT OF PETITION FOR JUDICIAL
) CONFIRMATION
PETITIONER.)
)

David Wali, being first duly sworn under oath, deposes and says:

1. I am Executive Vice President of K.C. Gardner Company, L.C. ("Gardner") and I give this Affidavit in support of the Petition for Judicial Confirmation (the "Petition") filed by Greater Boise Auditorium District (the "District"). Capitalized terms used in this Affidavit have the meaning assigned to such terms in the Petition.

2. Gardner has entered into an Amended and Restated Master Development Agreement dated November 20, 2014 (the "Gardner MDA") with the District under which

Gardner will build-to-suit certain condominium units containing a new ballroom facility, related kitchen and ancillary facilities along with related soft costs and equipment (the "Financed Project") in a new building, to be known as the "Centre Building," to the south of the existing U.S. Bank office tower. Gardner expects construction of the Financed Project to be completed in July 2016.

3. Gardner is a full service real estate company specializing in the development of office, retail, industrial and medical buildings. For nearly 40 years, our founder, Kem C. Gardner, has been involved in such development. I have been employed by Gardner since 2013 and have been a full time resident of Boise, Idaho since 1986.

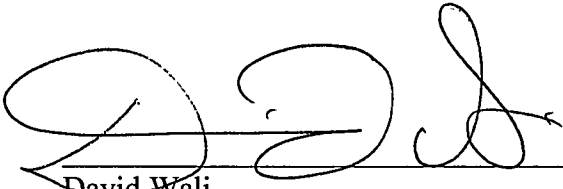
4. I was previously employed as the Director of Investments for Colliers International in Boise, Idaho. I have specific expertise related to Idaho commercial real estate transactions, including development of a variety of retail, office, medical, industrial, apartments and hospitality projects. I am the managing member of Wali Investments, which currently holds in excess of 500,000 square feet in commercial properties, including interests in the following downtown Boise projects, 9th & Idaho, the Fidelity building, Eastman Retail, Hotel 43, 2nd Chance Materials, and Furness Building.

5. I have reviewed the "Amortization" section of the Term Sheet attached as Exhibit C to the Petition relating to the projected annual Lease Payments by the District under the Lease Agreement. In my opinion, due to the size, configuration, and unique uses as a large commercial kitchen and ballroom, the annual Lease Payments for the Financed Project are below fair market value for comparable space.

\\

\\

Further your affiant sayeth naught.




David Wali

STATE OF IDAHO)
) ss.
County of ADA)

SUBSCRIBED AND SWORN TO before me this 23 day of January, 2015.





Notary Public for Idaho
Residing at BOISE, ID
My commission expires 1/3/2020

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of January, 2015, I caused to be served a true copy of the foregoing AFFIDAVIT OF DAVID WALI IN SUPPORT OF PETITION FOR JUDICIAL CONFIRMATION by the method indicated below, and addressed to each of the following:

John L. Runft, Esq.
Runft & Steele Law Offices, PLLC
1020 W. Main St., Ste. 400
Boise, ID 83702

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ E-mail
☐ Telecopy



Nicholas G. Miller

NORTON
JANINE
1/27/2015
CW

NO. 104 FILED
A.M. 11 P.M.

JAN 26 2015

CHRISTOPHER D. RICH, Clerk
By STACEY LAFFERTY
DEPUTY

Donald E. Knickrehm, ISB No. 1288
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601 W. Bannock Street
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Nicholas G. Miller, ISB No. 3041
S.C. Danielle Quade, ISB No. 6363
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 W. Main Street, Suite 1000
Boise, ID 83702-5883
Telephone: (208) 344-6000
Facsimile: (208) 954-5285

Attorneys for Petitioner
Greater Boise Auditorium District

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF:)	
	)	Case No. CV-OT-2014-23695
)	
GREATER BOISE AUDITORIUM	)	AFFIDAVIT OF PATRICK RICE IN
DISTRICT,	)	SUPPORT OF PETITION FOR JUDICIAL
	)	CONFIRMATION
PETITIONER.)	
)	
)	
)	

Patrick Rice, being first duly sworn under oath, deposes and says:

1. I am over the age of 18 years and competent to be a witness in the above-titled proceeding.

2. I make this Affidavit in support of Greater Boise Auditorium District's verified Petition for Judicial Confirmation (the "Petition"). I am and at all times relevant herein have been employed by the Greater Boise Auditorium District ("the District") as the Executive Director of the District.

58

3. I make this Affidavit based upon my own personal knowledge, which is in part based on a review of the records of the District that have been kept in the course of the District's regular business activity, of which I share custodianship.

The District maintains records in the ordinary course of its business. These records include, but are not limited to, copies of agreements, court orders, legal documents, and other records relevant to the formation and continued operation of the District (the "Records"). The Records are made or filed at or near the time of each event recorded, by someone with personal knowledge of the events, or from information transmitted by someone with personal knowledge of the events, or from information transmitted by someone with personal knowledge of each event and a business duty to set forth information in a report or record. As the Executive Director of the District, I am directly and personally familiar with the system used to make and store the Records. I, as well as all of the employees and officers of the District, have a business duty to accurately set forth information in the Records; to set forth that information in the Records at or near the time of the occurrence; and to file all of the applicable Records in the District file related to the particular issue. The Records and information referenced in this Affidavit were obtained from the District files maintained in the ordinary course of the District's business, pursuant to the procedures and system set forth above. The Records were not produced in anticipation of trial, but instead were produced as part of the ordinary course of business.

4. By virtue of my duties at the District, I am intimately involved with the business operations and management of the District.

5. The District is a public body organized and operating as an auditorium district pursuant to Idaho Code Title 67, Chapter 49 (the "Act"), and as such is a "political subdivision" within the definition contained in Idaho Code § 7-1303(6). The District was formed effective June 9, 1959 by the vote of the electorate of Ada County and encompasses the

boundaries of approximately the city limits of the City of Boise, the City of Garden City and portions of the City of Meridian and the City of Eagle, and of Ada County lying east of Eagle Road, south of Floating Feather Road, west of the conjunction of Warm Springs Avenue and Gowen Road, and north of Columbia Road. The population served by the District is greater than 25,000.

6. In accordance with Section 67-4917B of the Act, the District levies and collects hotel/motel room sales tax in the amount of five percent (5%) of the receipts derived from hotels and motels within the District (the "Room Tax").

7. The District currently operates the Boise Centre, an 85,000 square foot convention center and public event facility in downtown Boise.

8. The District desires to enter into a lease agreement to finance the acquisition of condominium units containing a new ballroom facility, related kitchen and ancillary facilities along with related soft costs and equipment (the "Financed Project"), to improve and expand the Boise Centre.

9. The District has entered into an Amended and Restated Master Development Agreement dated November 20, 2014 (the "Gardner MDA") with K.C. Gardner Company, L.C. (the "Developer") under which the Developer will build-to-suit the Financed Project as condominium units in a new building, to be known as the "Centre Building," to the south of the existing U.S. Bank office tower.

10. Pursuant to the Gardner MDA, upon satisfaction of certain conditions, including agreement on the final design and specifications, and the guaranteed maximum price, which agreement is estimated to occur in May 2015, the District will enter into a purchase agreement with the Developer for the purchase of the Financed Project (the "Purchase Agreement") under which the District will be obligated to purchase the Financed Project upon, but not before,

completion of construction. The District expects construction of the Financed Project to be completed in July 2016.

11. Although the District has sufficient funds available to acquire the subject facilities, the District desires to retain said funds in its general account and instead finance the purchase. In order to finance the purchase of the Financed Project, including all required reserves and financing costs, the District has contracted with the Urban Renewal Agency of Boise City, Idaho, aka Capital City Development Corporation (the "Agency"). On or about December 19, 2014, the District and the Agency entered into an Amended and Restated Development Agreement (the "Development Agreement") pursuant to which the Agency has agreed to employ certain of its statutory powers in connection with the financing of the Financed Project. A true and correct copy of the Development Agreement is attached as Exhibit A to the Petition.

12. Pursuant to the Development Agreement, the District and the Agency have agreed that the District will assign, and the Agency will accept the assignment of, the District's right to purchase the Financed Project under the Purchase Agreement, and, following successful completion of the Judicial Confirmation Proceedings, the District and the Agency will execute and deliver an Assignment and Assumption Agreement in substantially the form attached to the Development Agreement (the "Assignment") to so provide. In order to provide the funds needed for the Agency's purchase of the Financed Project, the Agency has agreed to issue a promissory note to Wells Fargo (the "Note"), as further described below.

13. Using the proceeds of the Note, the Agency will purchase the Financed Project from the Developer pursuant to the Assignment and thereby the Agency shall become the owner of the Financed Project.

14. Following the Agency's purchase of the Financed Project, the Agency will lease

the Financed Project to the District under a Lease Agreement (Annual Appropriation) (the "Lease Agreement"). The Lease Agreement has been drafted and will be finalized following favorable ruling from this Court on the Petition. A true and correct copy of the proposed Lease Agreement is attached as Exhibit B to the Petition.

15. The Note is payable by the Agency solely from lease payments paid by the District to the Agency under the Lease Agreement (the "Lease Payments"). The Note will be issued for an amount sufficient to provide funds to purchase the Financed Project, and the Lease Agreement, in turn, will provide for Lease Payments sufficient to enable the Agency to pay all principal and interest coming due on the Note.

16. The Lease Agreement is subject to annual appropriation and budgeting of funds by the District. The initial term of the Lease Agreement begins on the "Commencement Date" as defined in the Lease Agreement and, if not renewed by the District, will end at the conclusion of the District's fiscal year, November 30, following the Commencement Date. The Lease Agreement is renewable by the District for subsequent one-year terms only upon appropriation, budgeting and affirmative notice by the District of its intent to renew the same. The District's exercise of its unilateral option to renew continues the Lease Agreement for an additional Renewal Term (as defined in the Lease Agreement) on the same terms, conditions and covenants. The Agency is bound by the Lease Agreement for as long as the District renews with no option to terminate except in the event of a default by the District.

17. If the District renews the Lease Agreement for sufficient years that the Note is paid in full, the Lease Agreement terminates and the District has the right to purchase the Financed Project for a nominal sum. The District also has the right to purchase the Financed Project and thus terminate the Lease Agreement at any time upon payment of a purchase price

equal to the unpaid principal and interest due on the Note.

18. If the District elects not to renew the Lease Agreement for an additional Renewal Term (an "Event of Nonrenewal"), the Lease Agreement shall terminate on November 30 of the then current year and the District shall have no further indebtedness or liability thereunder.

19. In order to ensure that all of its obligations under the Lease Agreement are terminated in an Event of Nonrenewal, the District, by Resolution of its Board dated December 18, 2014 and as required by Section 8.12 of the Lease Agreement, has set aside, pledged and committed the amount of \$250,000 to be held in a "Lease Contingency Fund" as the sole source of payment for all claims of the Agency under the Lease Agreement, including such claims as may survive the District's termination of the Lease Agreement. The Agency has no other recourse against the District except to such Fund. If funds remain in the Lease Contingency Fund five (5) years after the termination of the Lease, such funds shall be released to the District. A true and correct copy of the Resolution of the District setting aside funds is attached hereto as **Exhibit A**.

20. The District has additionally set aside, pledged and committed \$100,000 to the Lease Contingency Fund to be held as the sole source of payment for all claims of Wells Fargo (as defined below) relating to the Financed Project (the "Bank Contingency"). The Bank Contingency differs from the amounts held in the Lease Contingency Fund for the claims of the Agency in that it does not survive termination of the Lease Agreement.

21. The District maintains commercial general liability insurance occurrence coverage for all facilities owned and leased by the District. Said coverage will specifically include the Financed Project, as required by Section 6.2 of the Lease Agreement. Accordingly, the District shall have insurance coverage for any incident occurring during the Lease Term (as defined in the Lease Agreement), even following an Event of Nonrenewal.

22. In connection with the financing of the Financed Project, the Agency will grant to the District a separate and additional option to purchase the Financed Project for a nominal sum once the Note has been paid in full (the "Option"). The Option shall survive termination of the Lease Agreement in an Event of Nonrenewal.

23. In October 2014, the District and the Agency jointly issued a request for proposals (the "RFP") to solicit interest from certain financial firms in financing the Financed Project. The request for proposals identified the transaction structure described above--i.e., that the Agency would issue the Note payable solely from the revenues derived from the District's Lease Payments under the Lease Agreement. As a result of the RFP, Wells Fargo Bank, N.A., Boise office ("Wells Fargo") proposed a term sheet, a true and correct copy of which is attached to the Petition as Exhibit C (the "Term Sheet") specifying the terms and conditions upon which Wells Fargo would purchase the Agency's Note to provide financing for the Financed Project plus related reserves and financing costs. The District ratified the execution of the Term Sheet at the meeting of its Board held on December 18, 2014.

24. The Term Sheet acknowledges that the District's payment of Rent (as defined in the Lease Agreement) is subject to annual renewal and appropriation and that the District may terminate the Lease Agreement at the end of any annual term with no further obligation. To secure repayment of the Note, the Agency will grant to Wells Fargo a Deed of Trust and Assignment of Rents ("Deed of Trust") which shall (a) assign to the bank the Lease Payments paid by the District under the Lease Agreement and (b) grant a first lien on the Financed Project, until the Note has been fully repaid. The Deed of Trust will be junior and subject to the Option held by the District.

25. The District intends to maintain its current ballroom and kitchen facilities at the Boise Centre. Thus, even in the event it chooses not to renew the Lease Agreement, the District

will be able to continue to operate its convention center facilities as they are currently being operated at the Boise Centre.

26. The District has not held an election to obtain voter approval of the District's authority to enter into the Lease Agreement and related documents because the Lease Agreement does not obligate the District beyond its current fiscal year.

27. The historical Room Tax receipts of the District, as shown on the District's financial statements, are as follows:

Fiscal Year	Annual Tax Revenues (Audited Financials)
2014	\$4,794,007*
2013	\$4,465,664
2012	\$4,117,700
2011	\$3,694,484
2010	\$3,471,448
	*unaudited

The District estimates annual receipts from the Room Tax to be approximately \$4,889,858 in fiscal year 2015, based on historical occupancy of hotels in the District and without the addition of any hotels within the jurisdictional boundaries of the District.

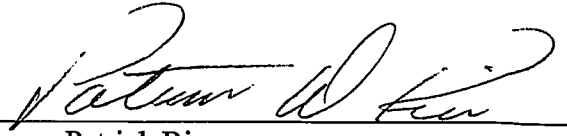
28. I have reviewed the Term Sheet attached as Exhibit C to the Petition relating to the projected annual Lease Payments by the District under the Lease Agreement. The historical and projected Room Tax receipts of the District significantly exceed the projected annual Lease Payments set forth in the section of the Term Sheet titled "Amortization."

29. The District estimates that the cost of acquiring the Financed Project will be approximately \$19,091,084, plus related soft costs and equipment, for a total Financed Project cost of approximately \$21,236,400 plus related reserves and financing costs.

\\

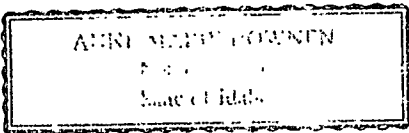
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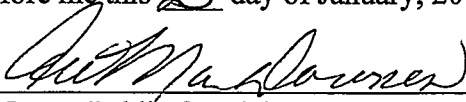
Further your affiant sayeth naught.


Patrick Rice

STATE OF IDAHO)
) ss.
County of Ada)

SUBSCRIBED AND SWORN TO before me this 23 day of January, 2015.



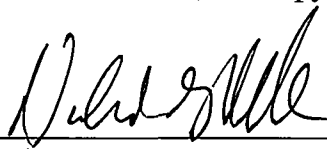

Notary Public for Idaho
Residing at Emmett
My commission expires 7/3/2020

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of January, 2015, I caused to be served a true copy of the foregoing AFFIDAVIT OF PATRICK RICE IN SUPPORT OF PETITION FOR JUDICIAL CONFIRMATION by the method indicated below, and addressed to each of the following:

John L. Runft, Esq.
Runft & Steele Law Offices, PLLC
1020 W. Main St., Ste. 400
Boise, ID 83702

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ E-mail
☐ Telecopy



Nicholas G. Miller

EXHIBIT A

[Resolution of the District setting aside funds]

**A RESOLUTION OF THE BOARD OF DIRECTORS OF GREATER BOISE
AUDITORIUM DISTRICT, MAKING FINDINGS AND DECLARATIONS
WITH RESPECT TO COMMITTING CERTAIN FUNDS OF THE DISTRICT;
AND PROVIDING FOR RELATED MATTERS**

WHEREAS, Greater Boise Auditorium District (the "District") is an auditorium district organized and operating pursuant to Title 67, Chapter 49 of the Idaho Code, as amended;

WHEREAS, on November 20, 2014, after public hearing, the District adopted a resolution authorizing filing of a new Petition for Judicial Confirmation under Title 7, Chapter 13 of the Idaho Code, to confirm the power of the District to enter into a lease agreement, as revised (the "Revised Lease") with the Urban Renewal Agency of Boise City, Idaho, aka Capital City Development Corporation (the "Agency").

WHEREAS, on November 20, 2014, the Board of Directors of the District (the "Board") adopted the District's 2014-2015 fiscal year budget providing for amounts adequate to satisfy the various fund commitments described in this Resolution;

WHEREAS, the Board previously approved a development agreement that was entered into on June 9, 2014 (the "Development Agreement"), between the District and the Agency, providing for, among other things, (a) the acquisition of certain condominium units containing a new ballroom facility, related kitchen, and ancillary facilities in the Centre Building to be constructed south of the existing U.S. Bank office tower in close proximity to the District's existing facilities to be operated by the District, along with related soft costs and equipment (collectively, the "Financed Project"), and related reserves and financing costs, (b) the role of the Agency as a conduit issuer, (c) payment of expenses, and (d) the judicial confirmation process and related matters;

WHEREAS, the District approved certain revisions to the Development Agreement (the "Amended and Restated Development Agreement") at its October 15, 2014 meeting, together with such changes thereto approved by the Board Chairman and Executive Director as shall be needed prior to the execution thereof, and authorized the Board Chairman and Executive Director to execute the same;

WHEREAS, under the Amended and Restated Development Agreement the District has agreed to assign to the Agency the District's right to purchase the Financed Project, and has requested that the Agency issue a lease revenue Note secured by lease payments under the Revised Lease (the "Note") in an amount sufficient to acquire the Financed Project and to pay the costs of issuing the Note;

WHEREAS, the Amended and Restated Development Agreement calls for the District to presently budget and commit \$250,000 to be held in a contingency fund (the "Contingency Fund") as the sole source of payment for claims of the Agency under the Amended and Restated Development Agreement;

WHEREAS, the Revised Lease calls for the District to presently budget and commit \$250,000 to be held in a fund to be called the "Lease Contingency Fund" as the sole source of payment for all claims of the Agency under the Revised Lease, including such claims as may survive the District's termination of the Revised Lease;

WHEREAS, the District desires to set aside, commit and pledge funds now existing in its general operating account in the amount of \$250,000 for the purpose of satisfying the Contingency Fund and, upon execution of the Revised Lease, funding the Lease Contingency Fund;

WHEREAS, the Amended and Restated Development Agreement calls for the District to presently budget and commit \$123,000 in a fund to be called the "Expenses Fund" to be held by the District as the sole source of payment for all reasonable and necessary out-of-pocket costs, expenses and fees, incurred by the Agency from June 9, 2014 through the effective date of the Revised Lease directly in connection with the issuance of the Note and the Financed Project;

WHEREAS, the District desires to set aside, commit and pledge funds now existing in its general operating account in the amount of \$123,000 for the purpose of satisfying the Expenses Fund;

WHEREAS, the District and the Agency sought proposals from certain banks to purchase the Note and received a number of responses;

WHEREAS, the District has received a term sheet from Wells Fargo Bank (the "Bank") setting forth certain terms and conditions for the Bank's purchase of the Note (the "Term Sheet");

WHEREAS, the Term Sheet calls for the District to pay all fees and expenses relating to the preparation of the financing documentation for the Financed Project, whether or not the transaction is executed, as incurred up to a maximum amount of \$60,000 (the "Documentation Contingency");

WHEREAS, the Term Sheet caps the District's potential obligation for Bank fees, costs, expenses, losses and liabilities relating specifically to the Financed Project at \$100,000 in the event the Revised Lease is executed (the "Bank Lease Contingency"), and the Revised Lease calls for the District to presently budget and commit \$100,000 to be held in the Lease Contingency Fund as the sole source of payment for the Bank Lease Contingency;

WHEREAS, the District desires to set aside, commit and pledge funds now existing in its general operating account in the amount of \$60,000 for the purpose of satisfying the Documentation Contingency;

WHEREAS, the District desires to set aside, commit and pledge funds now existing in its general operating account in the amount of \$100,000 for the purpose of satisfying the Bank Lease Contingency;

WHEREAS, the District's unaudited balance sheet for Fiscal Year 2014, attached as Exhibit A hereto, shows an unassigned portion of its fund balance in the amount of \$7,786,875 and cash and cash equivalents in the amount of \$2,481,456, both of which are well in excess of the amounts proposed to be committed in this Resolution; and

WHEREAS, the Board has broad powers under Section 67-4912 to exercise management and control of the business and affairs of the District including powers necessary or incidental to, or implied from, its specific powers.

NOW, THEREFORE, IT IS RESOLVED BY THE BOARD AS FOLLOWS:

Section 1: In the succeeding sections of this Resolution, the District is authorizing the designation, commitment and pledge of its funds now existing in its general operating account for specific purposes. In each case, the purpose and intent of the District is that the funds once designated and set aside by this Resolution shall be committed to the purpose described and for no other purpose during the period of time described in such section. Following the expiration of the designation, any funds so reserved shall be returned to the general operating funds of the District to be used for any lawful purpose.

Section 2. The District shall set aside, commit and pledge funds in the amount of \$250,000 for the purpose of satisfying the Contingency Fund. The designation in this Section 2 shall take effect on the date hereof. At such time as the Agency shall execute the Revised Lease, the reservation of funds in this Section 2 shall convert into a reservation of funds to satisfy funding the Lease Contingency Fund. In the event that the funds existing in the Contingency Fund at the time of execution of the Revised Lease are insufficient to fully fund the Lease Contingency Fund, the District shall set aside, commit and pledge additional funds as necessary to bring the balance of the Lease Contingency Fund to \$250,000. If (a) the Agency issues the Note, at such time as the Note shall be paid in full, or (b) the District determines to not enter into the Revised Lease and gives notice of such determination to the Agency, the reservation of funds in this Section 2 shall expire and be of no further force and effect.

Section 3. The District shall set aside, commit and pledge funds in the amount of \$123,000 for the purpose of satisfying the Expenses Fund. The designation in this Section 3 shall take effect on the date hereof. At such time as the Agency shall acquire the Financed Project with the proceeds of the sale of the Note, the reservation of funds in this Section 3 shall expire and be of no further force and effect.

Section 4. The District shall set aside, commit and pledge funds in the amount of \$60,000 for the purpose of satisfying the Documentation Contingency. The designation in this Section 4 shall take effect on the date hereof. If (a) the Agency issues the Note, or (b) the District determines to not enter into the Revised Lease and gives notice of such determination to the Bank, the reservation of funds in this Section 4 shall expire and be of no further force and effect.

Section 5. The District shall set aside, commit and pledge funds in the amount of \$100,000 for the purpose of satisfying the Bank Lease Contingency. The designation in this Section 5 shall take effect on the date the District executes the Revised Lease and the Agency issues the Note. The reservation of funds in this Section 5 shall expire and be of no further force and effect at the end of any lease term following an Event of Nonrenewal by the District under the Revised Lease.

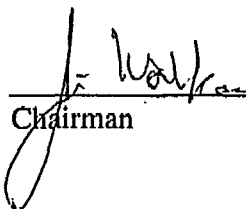
Section 6. The District shall establish a separate banking account and deposit the funds committed under this Resolution into said account.

Section 7. If any section, paragraph, clause or provision of the foregoing resolutions shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of the resolutions.

PASSED AND ADOPTED by Greater Boise Auditorium District on December 18, 2014.

APPROVED AND EXECUTED by the Chairman of the Board of Directors of the District, and attested by the Executive Director or the Secretary of the Board of Directors of the District, on this 18th day of December 2014.

APPROVED:

By:  _____
Chairman

ATTEST:

By:  _____
Executive Director

BALANCE SHEET
NOVEMBER 29, 2014
UNAUDITED

EXHIBIT A

	YEAR TO DATE	
	ACTUAL	PRIOR YEAR
Assets		
Cash and cash equivalents	\$2,481,456	\$2,013,206
Investments	15,872,474	14,680,073
Receivables:		
Taxes receivable	422,787	425,884
Interest receivable	100,952	77,058
Prepaid expenses	12,525	
Total Current Assets	18,890,194	17,196,221
Assets In Progress-Centre East	2,500,000	
Total Assets	21,390,194	17,196,221
Liabilities		
Accounts payable	622	13,706
Accrued expenses	66,433	300
Total Current Liabilities	67,055	14,006
Fund Balance		
Nonspendable:		
Receivables	523,738	502,943
Prepaid expenses	12,525	
Committed:		
Expansion Plans	13,000,000	13,000,000
Assigned:		
Operating requirements		550,000
Capital project requirements		112,000
Unassigned	7,786,875	3,017,273
	21,323,138	17,182,216
Total Liabilities and Fund Balance	\$21,390,193	\$17,196,222

FEB 11 2015

CHRISTOPHER D. RICH, Clerk
By KATRINA HOLDEN
DEPUTY

Norton vs 2-12-15
JOHN L. RUNFT (ISB # 1059)
JON M. STEELE (ISB # 1911)
RUNFT & STEELE LAW OFFICES, PLLC
1020 W. Main Street, Suite 400
Boise, Idaho 83702
Phone: (208) 333-8506
Fax: (208) 343-3246
Email: JRunft@runftsteele.com

Attorneys for David Frazier

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

IN THE MATTER OF:)
GREATER BOISE AUDITORIUM) Case No. CV OT 1423695
DISTRICT,) **AMENDED STIPULATION RE: BRIEFING**
Petitioner.) **SCHEDULE**
_____))
_____)

Petitioner, Greater Auditorium District (the "Petitioner"), and respondent, David R. Fraizer (the "Respondent"), by and through their respective attorneys of record, hereby stipulate and agree as follows:

1. Hearing on the Petitioner's Petition for Judicial Confirmation (the "Hearing") has been set for February 25, 2015 at 3:00 p.m. before the Honorable Lynn G. Norton.
2. The memoranda and affidavits in support of the Petition for Judicial Confirmation ("the Supporting Pleadings") were filed with the Court and were received by the Respondent on January 26, 2015.
3. It shall not be necessary for Respondent to file any memoranda and/or affidavits in response to the Petition for Judicial Confirmation (the "Petition") and the Supporting

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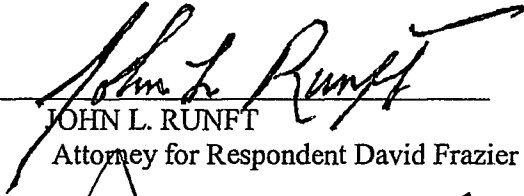
Pleadings (the "Responsive Pleadings"), but if Respondent elects to do so, said Responsive Pleadings shall be filed with the Court and served so that they are received by the Petitioner no later than February 13, 2015.

4. Any memoranda and/or affidavits in reply to the Responsive Pleadings shall be filed with the Court and served so that they are received by the Respondent no later than February 20, 2015.
5. Except as to the matters set forth herein, the Idaho Rules of Civil Procedure shall govern in matters of pleading and practice.
6. Nothing herein shall bind or prejudice any respondent not a party to this Stipulation.

DATED this 10th day of February, 2015.


RUNFT & STEELE LAW OFFICES, PLLC

By: _____


JOHN L. RUNFT

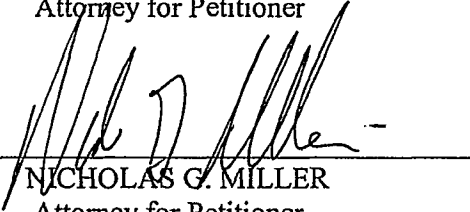
Attorney for Respondent David Frazier

By: _____


DONALD E. KNICKREHM

Attorney for Petitioner

By: _____


NICHOLAS G. MILLER

Attorney for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 10th day of February 2015, a true and correct copy of the foregoing **AMENDED STIPULATION RE: BRIEFING SCHEDULE**, was served upon opposing counsel as follows:

Donald E. Knickrehm
Givens Pursley LLP
601 E. Bannock St.
Boise, ID 83702
F: (208) 388-1300

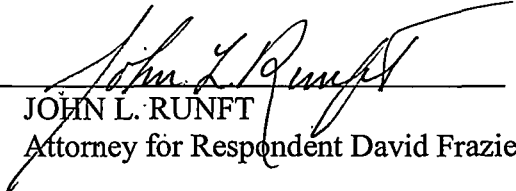
☐ US Mail
☐ Personal Delivery
☒ Facsimile

Nicholas G. Miller
S.C. Danielle Quade
Hawley Troxell Ennis & Hawley LLP
877 W. Main St., Suite 1000
Boise, ID 83702-5883
F: (208) 954-5285

☐ US Mail
☐ Personal Delivery
☒ Facsimile

RUNFT & STEELE LAW OFFICES, PLLC

By: _____


JOHN L. RUNFT

Attorney for Respondent David Frazier

Norton
Janine
2/17/15 JH

NO _____ FILED 1
A.M. _____ P.M. 4:55

FEB 13 2015

JOHN L. RUNFT (ISB # 1059)
JON M. STEELE (ISB # 1911)
RUNFT & STEELE LAW OFFICES, PLLC
1020 W. Main Street, Suite 400
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Fax: (208) 343-3246
Email: JRunft@runftsteele.com

CHRISTOPHER D. RICH, Clerk
By SANTIAGO BARRIOS
DEPUTY

Attorneys for David Frazier

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF:)
GREATER BOISE AUDITORIUM) Case No. CV OT 1423695
DISTRICT,)
Petitioner.) **RESPONDENT'S BRIEF IN OPPOSITION**
) **TO MEMORANDUM IN SUPPORT OF**
) **PETITION FOR JUDICIAL**
) **CONFIRMATION**
)

COMES NOW, David R. Frazier, Respondent, by and through his attorney of record, John L. Runft, and submits his Response in opposition to Petitioner's Memorandum In Support Of Petition for Judicial Confirmation filed pursuant to Idaho Code § 7-1304 by the Petitioner herein, the Greater Boise Auditorium District ("District"), on December 19, 2014.¹

¹ The capitalized terms used in this Brief have meaning assigned to such terms in the District's Petition and supporting documents, and in all cases refers to the "revised" version of said documents.

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INTRODUCTION

The issue before the Court in this matter is whether the Lease Agreement with annually appropriated payments proposed by the Petitioner (“District”), when construed in conjunction with its other supporting documents, creates a debt or liability prohibited by Article VIII, § 3 of the Idaho Constitution. The District seeks a judicial confirmation under Idaho Code § 7-1301, et seq. of the constitutionality of the Lease Agreement. The Lease Agreement is designed to

provide the revenue stream for the long term financing of the Financed Project by means of the bonds to be issued by the Urban Renewal Agency of Boise City, a/k/a Capital City Development Corporation ("Agency").

Despite the long term nature of the subject financing, the District alleges that the Lease Agreement imposes a valid obligation on the District under Article VIII, § 3 of the Idaho Constitution, because it purports to obligate the District only for an initial term corresponding to its fiscal year, and is renewable each year thereafter through annual appropriation, budgeting, and affirmative notice of the intent to renew, without being subject to any debt or liability if not renewed. Respondent alleges that the Lease Agreement proposed by Petitioner, when construed, as it must be, with the other supporting documents involved in the Financed Project, will violate the specific provision in Article VIII, § 3, of the Idaho Constitution prohibiting political subdivisions of the State from incurring any indebtedness or liability, other than for ordinary and necessary expenses, in excess of their income and revenue for the year without voter approval.

JURISDICTION AND STANDING

Respondent stipulates that the District, Petitioner herein, is a public body and a subdivision of the State of Idaho organized and operating as an auditorium district pursuant to Idaho Code §§ 67- 4901, et seq., and is a political subdivision pursuant to Idaho Code § 7-1303; Respondent alleges that the Court has jurisdiction in this matter; and that Petitioner and Respondent have standing in this matter is granted under the Judicial Confirmation Law, Idaho Code §§ 7-1301 et seq. Respondent is a citizen, property owner, taxpayer, elector, and resident at 1921 Cataldo Dr., Boise, Idaho 83705, in the Greater Boise Auditorium District who has standing in this matter as granted by I.C. § 7-1307. For over one-hundred years Idaho courts

have entertained taxpayer or citizen challenges based upon Article VIII, Section 3 of the Idaho Constitution. *Koch v. Canyon County*, 145 Idaho 158, 162, 177 P.3d 372, 376 (2008); *City of Boise v. Frazier*, 143 Idaho 1, 137 P.3d 388 (2006).

Respondent appeared and testified in opposition to the District's Resolution authorizing the filing of the subject petition in the public hearing held pursuant to Idaho Code § 7-1306 on November 5, 2014. His testimony has been incorporated in the record of the hearing. Respondent agrees with the District's allegations regarding jurisdiction as set forth in Section V of the District's Memorandum In Support Of Petition For Judicial Confirmation (hereinafter "Dist. Memo")

BACKGROUND

The District has set forth an extensive factual recitation in the BACKGROUND section of its Dist. Memo, which contains many undisputed facts mixed with statements of desires and future plans of the District. As such, said BACKGROUND does indicate what the District is attempting to achieve in the premises. Whereas, for example, Respondent does not dispute the facts stated in the Dist. Memo in section I.A entitled "The District," resort to, and construction of, the actual relevant documents involved in this matter nevertheless provide the best and only reliable description and analysis of the "background" in this matter, particularly for the reason that they are all expressly interrelated and interdependent.

The entire transaction, including the Lease Agreement, is part of the grand scheme of development and financing the subject Project that is envisioned by the Amended Master Development Agreement ("MDA") between the District and KC Gardner Company L.C. ("Gardner"). A copy of the MDA and certain exhibits is attached as **Exhibit 1** to the *Affidavit of*

John L. Runft in Support of Respondent's Brief in Opposition to Memorandum in Support of Petition for Judicial Confirmation ("Runft Affidavit" Exh. 1) In this respect, § 2.5.1 of the MDA provides: "The Project Documents are intended to be an integral whole and shall be interpreted as internally consistent. The purpose of the Project is set forth in § 1.4 of the MDA as follows:

1.4 The District Facilities. The District desires to have Gardner construct new convention center facilities (the Centre Facilities and the Meeting Facilities, sometimes collectively referred to as the **District Facilities**) in the Clearwater Building and the Centre Building, and Gardner desires to construct the same and sell the Centre Facilities to the District, and sell (or lease) the Meeting Room Facilities to the District.

The sale of Centre Facilities by Gardner to the District is mandated in §2.2 of the MDA, as follows:

2.2 Purchase and Sale Agreement. Gardner and the District shall execute and enter into a Purchase and Sale Agreement (the "PSA") for the Centre Facilities providing that Gardner shall sell to the District and the District shall purchase from Gardner the Centre Facilities. The PSA shall be substantially in the form attached hereto as **Exhibit "D."** The PSA shall include the right of the District to assign it and the right to purchase therein provided to the Capital City Development Corporation.

A copy of the form of the PSA is attached as **Exhibit 2** to the Runft Affidavit. The District's Obligations are set forth in § 3 of the MDA and include making two cash deposits in the sum of \$2,500,000 each, which are together referred to as the **Centre Deposit**, which "serves solely as security for the District's performance of its purchase obligation for the Centre facilities upon completion of construction by Gardner." (emphasis supplied) Depending on outcomes, three different applications of the five million dollar Centre deposit are provided for:

- (1) If the CCDC (the “Agency”) as the assignee of the District under § 4A of the PSA, purchases the Centre Facilities (with bond sales proceeds), then the Centre Deposit shall be paid to the District²;
- (2) If the District purchases the Centre Facilities, then the Centre Deposit shall be paid to the District (and in part credited toward the Purchase Price)’
- (3) If both the District and the Agency fail to pay the Purchase Price, Gardner may retain the Centre Deposit.

The foregoing is illustrative of the point here that the MDA contemplates and ties in all of the subsequent transactions and related documents that are entered into relative to this Project and its financing, including, but not limited to, the PSA, the Amended and Restated Development Agreement (“Development Agmt.”), the Assignment and Assumption Agreement, the Lease Agreement, the issuance of the Note by the Agency pursuant to Idaho Code § 50-2012, and the Wells Fargo Bank Term Sheet for the purchase of the Note.

The interrelationship and acknowledged “complexity” of the project and the parties’ “respective obligations” (MDA, § 3 **Joint Financing Obligations**), contradicts the District’s allegation in footnote 1 on page 3 in the Dist. Memo that judicial review of the constitutionality of the Lease is unrelated to the obligations of the parties under the MDA and other related documents of the Project. Before analyzing the provisions of the respective documents further, the state of the applicable law should be addressed.

² In this outcome the District not only gets the deposit back, it pays only a nominal sum to the CCDC for the Centre Facilities. The term “**Center Facilities**” referred to in the MDA and in the PSA, becomes the “**Financed Project**” in both the Amended and Restated Development Agreement (“Development Agreement”) and in the Lease Agreement between the District and the Agency.

ARGUMENT

1. **The strict “Feil Standard” is res judicata in Idaho and as applied in the Fourth Judicial District.**

By the “Feil Standard” Respondent refers to the narrow interpretation and strict application of Article VIII, § 3 of the Idaho Constitution by the Idaho Supreme Court in *Feil v. City of Coeur d'Alene*, 23 Idaho 32, 129 P. 643, 648-649 (1912), which has been faithfully followed to current times by the Idaho Supreme Court and consistently applied by the Idaho Fourth Judicial District Court. See: *Koch v. Canyon County*, 145 Idaho 158, 162, 177 P.3d 372, 376 (2008); *City of Boise v. Frazier*, 143 Idaho 1, 137 P.3d 388 (2006); *Boise Development Co., Ltd. v. City of Boise*, 26 Idaho 347, 143 P. 531, 535 (1914); *In the Matter of Greater Boise Auditorium District*, Case No. CVOT 14422300 in the Fourth Judicial District of the State of Idaho, Order Denying Petition for Judicial Confirmation, August 28, 2014 (prior decision regarding this Project) (See **Exhibit “A”** to Respondent’s Answer herein); *In the Matter of City of Boise*, Case No. CVOC0202395D 14422300 in the Fourth Judicial District of the State of Idaho, Decision Denying Petition (See **Exhibit “G”** to Dist. Memo).

Article VIII, § 3 states in pertinent part as follows:

No... subdivision of the state shall incur any indebtedness or liability in any manner, or for any purpose exceeding in that year, the income and revenue provided for it for such year without the assent of two thirds (2/3) of the qualified electors thereof voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provisions shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within thirty (30) years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void: provided that this Section shall not be construed to apply to the ordinary and necessary expenses authorized by the general laws of the state

In interpreting Article VIII, § 3, the Idaho Supreme Court in *Feil* stated that the Idaho Constitution “not only prohibits incurring any indebtedness, but it also prohibits incurring any liability in any manner or for any purpose, exceeding the yearly income and revenue.” *Feil*, supra 23 Idaho at 50, 129 P. at 649 (emphasis supplied). Moreover, the term “liability” has been interpreted by the Idaho Courts to be much more sweeping and comprehensive than the term “indebtedness,” *Feil*, supra, 23 Idaho at 50, 129 P. at 649 (emphasis supplied). See; see also, *Boise Development Co.*, supra 26 Idaho 347, 143 P. 531; *Straughan v. City of Coeur d’Alene*, 53 Idaho 494, 24 P.2d 321 (1932). The Court in *Feil* defined the term “liability” to include “the state of being bound or obligated in law or justice to do, pay, or make good something; legal responsibility....” *Id.* Whether the liability is large or small or contingent is irrelevant under the applicable strict Idaho constitutional standard. The *Feil* Court undertook to explain the extent and severity the constitutional limitations under Article VIII, § 3, as follows:

The framers of our Constitution were not content to say that “no city shall incur any indebtedness in any manner or for any purpose,” but they rather preferred to say that “no city shall incur any indebtedness or liability in any manner, or for any purpose.” It must be clear to the ordinary mind, on reading this language that the framers of the Constitution meant to cover all kinds and character of debts and obligations for which a city may become bound, and to preclude circuitous and evasive methods of incurring debts and obligations to be met by the city or its inhabitants. (Emphasis supplied) *Id.*

The strict construction of Article VIII, § 3 set forth above by Court in *Feil* has been continually reasserted and upheld by the Idaho Supreme Court. Most recently, in *Koch v. Canyon County*, 145 Idaho 158, 177 P.3d 372 (2008) the Court cited the holding in *Feil* and explained the primary purpose and objectives of Article VIII, §3 of the Idaho Constitution as follows:

Article VIII, § 3, was designed primarily to protect taxpayers and citizens of political subdivisions. *Feil v. City of Coeur d' Alene*, 23 Idaho 32, 49-50, 129 P. 643, 648-49 (1912). They are the ones who would bear the consequences of the subdivision incurring excessive indebtedness. In order to do so, the framers of our Constitution granted the qualified electors of the political subdivision the constitutional right to vote upon whether the subdivision could incur indebtedness or liabilities exceeding its income and revenue for the year. It cannot do so "without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose."

It is not sufficient to simply say that the issue should be left to the political process. With some exceptions, Article VIII, § 2, requires a two-thirds vote of the qualified electors to approve an expenditure, while officials violating the Constitution's spending restraints can retain their positions by a simple majority vote. Thus, leaving the matter to the political process would, in effect, change the required two-thirds vote to a simple majority. *Koch* at p. 162.

Moreover, the Idaho Supreme Court has limited its analysis of this constitutional provision to considering and applying only Idaho cases. The Idaho Supreme Court has frequently been requested to revise its strict construction of Article VIII, § 3 by local governments which advocated adoption of other states' interpretations of that Section. Primarily because of the unique wording of this Section of the Idaho Constitution and its underlying history, the Idaho Appellate Courts have made it clear that Idaho strictly construes this provision and does not follow other jurisdictions' interpretations. *Miller v. City of Buhl*, 48 Idaho 668, 284 P. 843, 845 (1930); *Feil*, 23 Idaho 32, 129 P. 643, *supra*. Idaho has resisted the "outcome oriented" philosophy of other jurisdictions and has strictly adhered to the historical construction of this constitutional provision. The Court in *Boise Development Co., Ltd. v. City of Boise*, 26 Idaho 347, 143 P. 531, 535 (1914) stated in commenting on a California court's outcome oriented philosophy:

[W]hen the court attempts by argument to escape the force and effect of the constitutional provision under consideration and show that the city incurred no liability under the contract, we submit that its reasoning is not sound.

Consequently, the Idaho Supreme Court has limited its analysis of this constitutional provision to considering and applying only Idaho cases. For example, it is now settled law in Idaho that voters must approve both general obligation bonds, which are secured by full faith and credit of the issuer, and revenue bonds, which are secured solely by a pledge of a special fund. *Asson v. City of Burley*, 105 Idaho 432, 670 P.2d 839 (1983), cert. denied, *Chemical Bank v. Asson*, 469 U.S. 870, 105 S. Ct. 219, 83 L. Ed. 2d 149 (1984); *Feil v. City of Coeur d'Alene*, supra; *Boise v. Frazier*, 143 Idaho 1, 2, 137 P.3d 388, 389 (2006).

The constitutional history of Idaho clearly demonstrates that the framers intended to severely limit the ability of local government to incur indebtedness. See, Proceedings of the Idaho Constitutional Convention, Vol. 1, pp. 590-593. This Court has emphasized that the framers of the Idaho Constitution “employed more sweeping and prohibitive language in the framing of § 3 of Article VIII, and pronounce a more positive prohibition against excessive indebtedness, than is to be found in any other constitution.....” *Feil v. City of Coeur d'Alene*, supra. (emphasis supplied). For sixty years, despite being the subject of frequent litigation, the applicable restrictive provisions of Article VIII, § 3 remain substantially unaltered. These limitations have been strictly applied by this Court. See, Dennis Colson, Idaho’s Constitution, pp. 105-110; 198-202 (1991).

Nevertheless, once again, the District cites numerous decisions in other jurisdictions allowing financing of long-term contracts by means of annually appropriated payments under various constitutional provisions of other states. In its previous decision denying the District’s Petition for Judicial Confirmation regarding this Project (*In the Matter of Greater Boise*

Auditorium District, Case No. CVOT 14422300, *supra*), this Court rejected applying decisions of other states holding that leases subject to annual appropriations are not a prohibited indebtedness or liability under similar constitutional provisions. Given this legal issue is identical in the present case, this holding is *res judicata* in the present proceedings.

2. The Financing Scheme for the “Financed Project” by means of a Purchase, Assignment, and an Annually Appropriated Lease violates Article VIII, § 3 of the Idaho Constitution.

At issue in Respondent's challenge to the Petition is the method of financing the Project. The clear purpose of the entire financing scheme, including the annually appropriated Lease, is to enable the District to ultimately purchase the Financed Project. (*See*, Resolution of the District Board of Directors to call a public hearing to consider filing new Petition for Judicial Confirmation, Pp. 1-2; Petition, P. 4; *Affidavit of Patrick Rice*, Pp. 3-4; MDA, Pp 2, 3; Development Agreement, Pp. 1-2; the Lease Agreement, P. 2.) The Lease must be construed as part of the whole Project Documentation in conjunction with the other supporting documents involved in the Financed Project pursuant to the MDA, which provides in § 2.51 as follows:

The Project Documents are intended to be an integral whole and shall be interpreted as internally consistent.

The District's agreement under the MDA to purchase the Financed Project is a presently binding agreement (MDA § 2.2; see also § 2 of the Development Agreement requiring satisfaction of the conditions of the MDA). Pursuant to § 3.1 of the MDA, the District's has provided and will provide substantial security deposits (“Centre Deposit”) as explained above,

“to ensure the District’s performance of its obligation to purchase the Centre Facilities (“Financed Project” in the Lease Agreement) as required herein and in the PSA.”

The District may argue that certain terms of the PSA (which is a form at this juncture) are yet to be nailed down and therefor the District is not yet really “obligated” under the MDA to purchase the Financed Project. The security and default provisions set forth in §3.1.1 belies such a contention. The undetermined details to be inserted into the PSA are unilaterally to be determined and controlled by Gardner under the MDA, and therefore, as far as the District is concerned, the obligation to purchase the Financed Project is a current, binding, long-term obligation.

The fact that the District has, as a first step in this “complex” transaction, entered into a long-term, binding obligation to purchase the asset which is to ultimately leased serves to distinguish this case from the other Idaho cases cited by the District that have approved annually appropriated leases (See Dist. Memo Exhibits A- F). As such, Respondents claim said binding, long-term agreement to purchase the Financed Project is a current, immediate violation of the specific provision in Article VIII, § 3, of the Idaho Constitution prohibiting political subdivisions of the State from incurring any indebtedness or liability, other than for ordinary and necessary expenses, in excess of their income and revenue for the year without voter approval. This existing violation cannot be cured by subsequently assigning the PSA to the Agency and then leasing it back. As a principal, the District cannot use its agent to do indirectly what it cannot do directly.³

³ It is clear the CCDC as the “Agency” in this transaction is acting as the agent of the District. Nowhere in the documentation is there a provision expressly proclaiming an independent contractor relationship (such as §9.4 in the MDA). This agency relationship is further manifested by the provisions of the Development Agreement, which in § 1d provides as follows: “To facilitate the financing of the Financed Project, the District has requested that the Agency utilize its statutory powers and further its public purposes by issuing a promissory note(s) or similar

The District may claim that the agreement to purchase is rescued by the Development Agreement, whereby the District has agreed to assign the PSA to the Agency. However, a close reading of § 2 of the Development Agreement discloses that such agreement is not yet in place. Whereas the District “hereby agrees to assign the Purchase Agreement to the Agency”..., the Agency’s agreement to accept the assignment of the PSA is conditioned on events over which these parties do not have unilateral control, namely; upon “satisfaction of the Conditions of the Master Development Agreement, successful completion of the Judicial Confirmation Proceedings, and issuance of the Note...”

The District has made a point¹ that it has reserves sufficient to purchase the Finance Project in the event the Financed Project is completed prior to the successful completion of the Judicial Confirmation Proceedings. (Development Agreement, § 2; Affidavit of Patrick Rice, § 11, P. 4). In the context of the long-term commitment envisioned under the Lease Agreement, this statement of financial capacity is irrelevant because there is no commitment of said funds. It is essentially a shell game.

However, there is another matter and set of possible circumstances that must be addressed for which the District has not provided sufficient information that may have undetermined financial consequences. Under the MDA, the District has actually entered into two agreements with the Developer. As discussed above, under § 2.2, the District has agreed to purchase the Center Facilities (Financed Project). However, in addition, under § 2.3 of the MDA, the District has agreed to lease with a “parallel option to purchase” the “Meeting Room Facilities” in the Clearwater Building (See **Exhibit 3** to the Runft Affidavit.) As pointed out in §

instrument (the Note) on the District’s behalf to be repaid by the Agency solely from lease payments payable by the District to the Agency (the “Lease Payments”).....”

13 of the Petition, the “build-to-suit meeting space and ancillary facilities located in the Clearwater Building are included in the Gardner MDA, but are not part of the Financed Project.” The Clearwater Lease (**Exhibit 3** to the Runft Affidavit.) is also an annual appropriation lease calling for a basic rental payment equal to “the product of 9.5% and the Costs of Construction.” This also is a current obligation of the District. However the District has reported that it only has anticipated annual income to support annualized payment for the Lease Agreement for the Financed Project. (See Affidavit of Patrick Rice P. 8, §27.) Even if the District purchased the Financed Project it would still need to have annual revenues sufficient to pay both annualized lease payments, which is not apparent from the record herein. Hence, by this calculation, the uncommitted prospect of the application of reserves to purchase the Financed Project is not any real resolution of open ended, undetermined aspects of this overall proposal put forth in the Petition.

In addition to the foregoing, and overreaching all obligations, the MDA imposes open-ended, indefinite obligations upon the District in § 3.3.2, as follows:

3.3.2 The District, Gardner, and the Gardner Affiliate all further acknowledge and agree that the Lender may impose additional reasonable obligations upon their respective performance under the Project Documents, including, but not limited to, requiring notice of any party’s default under any of the Project Documents; granting the Lender a security interest in the Property, the Project, and the Buildings. (Emphasis supplied)⁴

The constitutional implications of the open-ended, indefinite liability created by the right of a third party to “impose additional reasonable obligations” are not altered by the word “reasonable.” Not only is what is “reasonable” subject to debate, but “reasonableness” itself will vary according to the circumstances. For example, the Lender under unforeseen circumstances

⁴ The “Lender” referred to in the MDA § 3.3.2 is Gardner’s Project lender(s), not the Wells Fargo, as the purchaser of the Note to be issued by the Agency

could demand and acquire a security interest in the “Center Facilities” or “Financed Project” that would violate the District’s warranty to the Agency under §7.3 of the Lease Agreement that the Financed Project “shall have no liens or encumbrances other than the Permitted Encumbrances.” Moreover it would interfere with the commitment to provide the security on the Note to Wells Fargo, namely: first lien on the Finance Project and Assignment of Rents. (Petition, P. 7, § 22; Lease Agreement, Exhibit C – Wells Fargo Term Sheet.)

Given that the District has agreed to the specific performance of the MDA (§ 3.1.1), the effect of such a contractual mandate in creating a default liability cognizant under *Feil* would not likely be covered by insurance. The Court in *Feil* defined the term “liability” to include “the state of being bound or obligated in law or justice to do, pay, or make good something; legal responsibility....” *Id.* Undoubtedly, this definition would include the exposure to additional obligations created by the third party Lender under the terms of the MDA for the duration of the term of the Lease Agreement.

Finally, any claim that any appropriation under the proposed Lease by the District would be somehow different than the incurring of a debt or liability was rejected by the Court in *Koch v. Canyon County*, 145 Idaho 158, 162-163, 177 P. 3d 372 (2008). In this respect the court stated:

There is no logical difference between making an appropriation that is specifically prohibited by the Constitution and incurring an indebtedness or liability that is specifically prohibited by the Constitution. *Koch* at pp. 162-163.

The primary deficiency in this complex scheme is that, as a first step, the District has entered into a binding, long-term agreement to purchase the Financed Project. The District claims the financing scheme is a “lease,” simply because it is broken up into annual segments. In light of all of the appurtenant obligations and conditions involved the Lease Agreement and its

annual appropriation is in fact an arrangement for the “long-term financing for the purchase of (the Project). To say otherwise constitutes legerdemain in the extreme. In line with the clear statement of intent to purchase the Financed Facility, the District’s plan to make twenty-four (24) years of payments, cause its agent to issue bonds based on the District’s credit (this is manifested by the fact that to make this scheme work, the District must make the initial purchase), and the District’s ability to make payments calculated on a principal and interest basis, coupled with an option to acquire ownership of the Project for a nominal sum when the bonds are paid off is clearly a purchase agreement, not a lease, or better, a long-term mortgage in disguise.

3. The Termination of the Central District Plan in 2017, terminates the authority of the Agency to enter into any new annually appropriated leases thereafter.

The issue here is whether the Agency can enter into a new lease with the District after the Central District Plan has terminated. It is undisputed that the subject Project is located within the area of the Central District Plan (See Section 302 of the Central District Plan regarding “Plan Objectives” and area description). Moreover, Petitioner faces another dilemma from the standpoint that under its Lease provisions any “renewal” of the Lease constitutes a wholly new, independent lease. Each new Lease is sui generis and unrelated to the long term development of the Project. Each new Lease has no binding effect beyond the current term calendar year, and if not renewed, it terminates the right to renew, and, as the Lease itself provides: “no provision of the Lease shall survive termination.” (Lease, Article V.)

In order for an urban renewal agency to exercise its powers, it must “undertake and carry out urban renewal projects and related activities within its area of operation” (I.C. § 50-2007) and such projects and plans must be submitted for approval thereof to the local governing body

in the designated area. (I.C. § 50-2008) An urban renewal plan “means a plan, as it exists from time to time, for an urban renewal project.” (I.C. § 50-2018) A project or plan can be submitted by any interested party in an area certified as an urban renewal area (I.C. § 50-2008(b)). The Central District Plan was first certified by the Boise City Council on May 22, 1967 and subsequently amended and restated (Section 103, Central District Plan).

Section 800 of the Central District Plan states that December 31, 2017, is the date which “shall be deemed the termination date of the Plan, except for revenue allocation proceeds received in calendar year 2018. (Emphasis supplied) The exception for “revenue allocation proceeds” is not relevant here, because it refers to proceeds of revenue allocation (tax increment) financing under the Local Economic Development Act (I.C. 50-2901, et seq.). However, since the Central District Plan did contain a revenue allocation financing provision (Section 504), it was required pursuant to I.C. § 50-2008 to include provisions required in I.C. § 50-2905(8) describing the disposition or retention of any assets of the Agency in said district upon termination. I.C. § 50-2905(8) provides in this regard, as follows:

(8) A description of the disposition or retention of any assets of the Agency upon the termination date. Provided, however, nothing herein shall prevent the agency from retaining assets or revenues generated from such assets as long as the agency shall have resources other than revenue allocation funds to operate and manage such assets.

Further, I.C. § 50-2033 (“Prohibited Amendments”) precludes any extensions “of the years of the plan time beyond the maximum term allowed under Chapter 29 title 50, Idaho Code”....”

Reflecting the limitations I.C. 50-2905 (8), Section 800 of the Central District Plan provides as follows:

As allowed by Idaho Code Section 50-2905(7) (now sub 8, as amended).

The Agency may retain assets or revenues generated from such assets as long as the Agency shall have resources other than revenue allocation funds to operate and manage such assets. The Agency may retain ownership of the several parking facilities which may be constructed in the Project Area, as parking revenues may be sufficient to provide the resources necessary for the Agency to retain those assets. Similarly, the Agency may retain facilities which provide a lease income stream that will allow the Agency to meet debt service obligations, fully retire the facility debt, and provide for the continued operation and management of the facility.

Respondent contends that the foregoing termination provisions of the Idaho Code and the Central District Plan prohibit the Agency from entering into the Lease Agreement under all of the following circumstance for the following reasons.

1. It is clear that the Agency in the present matter would be prohibited from taking ownership of the Project assets and entering into the Lease Agreement with the District after December 31, 2017. It would involve providing an alleged revenue stream for an asset acquired post termination. Otherwise, the agency could allegedly continue on indefinitely acquiring assets and entering into bond financing agreements in the Central District after termination of the Plan.

2. Even if the Agency took assignment of the PSA prior to the termination date and obligated itself to purchase the Project, it would still not own the “asset,” at the time of termination for which the Lease Agreement would purportedly provide funding. Accordingly, the Agency would be prohibited from entering into the Lease Agreement after termination under these circumstances.
3. Even if, pursuant to the Development Agreement between the District and the Agency, the Agency enters into the Lease Agreement prior to the termination of the Central District Plan, but termination occurs before the bonds are sold and the Agency obtains title, the Agency would be prohibited from entering into a new lease after termination, because it would not own an “asset” as required under I.C. § 50-2905(8), for which to provide an “income stream” under Section 800 of the Central District Plan.
4. Finally, Respondent contends that even if the Agency obtained title to the Project prior to termination of Central District Plan, it is prohibited from retaining the asset and entering into a new non-appropriated or annually appropriated lease after termination (even though one or more “Terms” of the lease had been renewed prior to termination), for the reason that payment from a mere annual lease does not qualify as the type of appropriated “revenue stream” to meet the debt service and “fully retire the facility debt” envisioned by I.C. § 50-2905(8), and Section 800 of the Central District Plan. (See also “Revenue Bonds,” Central District Plan, Section 502) The Agency would be required to divest itself of the asset, perhaps conveying the asset to the City.

Although the power to issue revenue bonds is vested in the Agency to exercise “in its discretion” to finance any urban renewal project (I.C. § 50-2012), it would be highly imprudent on the part of the Agency to issue revenue bonds under the prospects of this Petition for Confirmation (a) where there is no consistent or reliable revenue stream actually appropriated for the commensurate amount needed to retire the debt, and (b) where, in any event, the Agency’s authority to renew the Lease Agreement after termination of the Central District Plan disappears.

4. **The Exercise Of The Right To Vote Is Fundamental And, Thus, Strict Scrutiny Applied To A Challenge To Constitutionality Of The Petition For Judicial Review That Seeks To Circumvent The Vote Of Qualified Electors In The District Regarding The Funding Of A Project**

Since the exercise of the right to vote is recognized as a fundamental constitutional right under both state and federal law, strict scrutiny must be applied by the Court to any attempt by a governmental agency to circumvent a vote of qualified electors. U.S. Constitution Fourteenth Amendment; Idaho Constitution Article. 1, § 19.6, § 1 et seq.; Idaho Code § 34-907B. Under the strict scrutiny standard of review, conduct of a governmental agency which infringes on a fundamental right, for purposes of equal protection analysis, will be upheld only where it can demonstrated that it comports to a compelling state interest. U.S.C.A. Const. Amend. 14. *Van Valkenburgh v. Citizens for Term Limits*, 135 Idaho 121, 15 P.3d 1129, (2000).

Respondent alleges that he and others similarly situated would suffer a "distinct palpable injury" to their right to vote if the District were allowed without seeking voter approval to implement terms of the Lease Agreement whereby substantial public funds will be expended over many years on this Project of the District. Respondent respectfully urges that the District

does not have any official compelling interest in pursuing its Project without seeking voter approval. The District claims no “emergency” in these proceedings.

In respect to the Court's unique role in representing the people when adjudicating in a voting case, the Court is referred to the Fourth Judicial Court decision in *City of Boise vs Frazier* (Case No. CVOC 0202395D August 26, 2002) issued by the Honorable Cherie Copsey. In that case, the Court explains in detail the unique responsibility of the Court when it represents the people who were deprived of their right to vote on a municipal project in violation of their rights under Article VIII, Section 3 of the Idaho Constitution.

CONCLUSION

Respondent submits that the proposed Development Agreement, Lease Agreement, and the other agreements comprising the subject financing scheme for the purchase of the Financed Project result in subjecting the District to a long-term liability, thereby requiring that the District seek the approval of the voters in the District. By petitioning for judicial confirmation of this Project without seeking such electoral approval, the District is attempting to subvert the intent of Article VIII, § 3 of the Idaho Constitution as well as violating fundamental constitutional rights inherent in the voting franchise.

While the proposed Project is to be funded with taxes paid by hotel guests and not through ad valorem property taxes, the funds are still public money. The District seeks to deny the citizens their right to vote on a profound financial debt, obligation, and liability which places future elected boards in a position of either approving the actions of a previous board or losing up to 23 million dollars in past payments if they ever fail to appropriate funds over a 24 year period. When the transparency of the "Emperor's clothes" becomes apparent in this case, the disclosure of the naked truth is that through a complex series of agreements the District has

arranged to utilize a faux lease to fund the Project it had agreed to purchase, with the people's money without getting their approval as required by the Constitution of the state of Idaho. The Idaho Supreme Court concluded in Boise City v. Frazier, supra, that an emergency must exist to warrant denying citizens of their right to vote on such debt and/or liabilities. No such circumstance exists here.

ATTORNEYS FEES

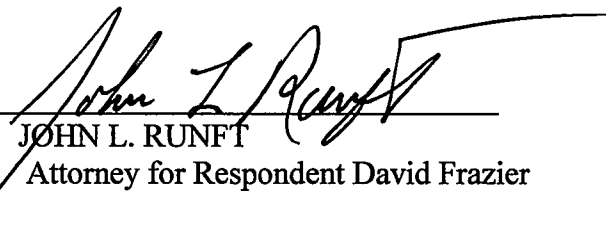
Respondent has been required to retain the services of counsel to assist him in preparation in response to this action and has retained the firm of Runft & Steele Law Offices, PLLC, and has agreed to pay said attorneys a reasonable fee. Respondent is entitled to recover his reasonable costs and attorney's fees pursuant Idaho Code § 7-1313 and § 12-117.

WHEREFORE Respondent prays that the Court enter an order as follows:

1. Respondent respectfully asks the Court to dismiss the Petition for Judicial Confirmation;

DATED this 13th day of February, 2015.

RUNFT & STEELE LAW OFFICES, PLLC

By: 
JOHN L. RUNFT
Attorney for Respondent David Frazier

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 13th day of February 2015, a true and correct copy of the foregoing **RESPONDENT'S BRIEF IN OPPOSITION TO MEMORANDUM IN SUPPORT OF PETITION FOR JUDICIAL CONFIRMATION**, was served upon opposing counsel as follows:

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Givens Pursley LLP
601 E. Bannock St.
Boise, ID 83702
F: (208) 388-1300

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☐ Personal Delivery
☒ Facsimile

Nicholas G. Miller
S.C. Danielle Quade
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RUNFT & STEELE LAW OFFICES, PLLC

By: 
JOHN L. RUNFT
Attorney for Respondent David Frazier

FEB 13 2015

CHRISTOPHER D. RICH, Clerk
By SANTIAGO BARRIOS
DEPUTY

JOHN L. RUNFT (ISB # 1059)
JON M. STEELE (ISB # 1911)
RUNFT & STEELE LAW OFFICES, PLLC
1020 W. Main Street, Suite 400
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Fax: (208) 343-3246
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Attorneys for David Frazier

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF:) Case No. CV OT 1423695
)
GREATER BOISE AUDITORIUM) AFFIDAVIT OF JOHN L. RUNFT IN
DISTRICT,) SUPPORT OF RESPONDENT'S BRIEF
Petitioner.) IN OPPOSITION TO MEMORANDUM
) IN SUPPORT OF PETITION FOR
) JUDICIAL CONFIRMATION
)
)
)

STATE OF IDAHO)
County of Ada) :ss

COMES NOW, John L. Runft, being over the age of eighteen years and competent to make this Affidavit, after first being duly sworn, and upon his own personal knowledge, states as follows:

1. That I am the managing member of the law firm of Runft & Steele Law Offices, PLLC and lead counsel for Respondent David Frazier (hereafter "Respondent") in the above case.

AFFIDAVIT OF JOHN L. RUNFT IN SUPPORT OF RESPONDENT'S BRIEF IN
OPPOSITION TO MEMORANDUM IN SUPPORT OF PETITION FOR JUDICIAL
CONFIRMATION – Page 1

ORIGINAL

2. That I make this Affidavit in Support of Respondent's Brief in Opposition to Memorandum in Support of Petition for Judicial Confirmation.
3. Attached as Exhibit 1 is a true and correct copy of pages 1-20 of the Amended and Restated Master Development Agreement Between Greater Boise Auditorium District and KC Gardner Company, L.C.
4. Attached as Exhibit 2 is a true and correct copy of "Exhibit D – Purchase and Sale Agreement" to the Amended and Restated Master Development Agreement Between Greater Boise Auditorium District and KC Gardner Company, L.C.
5. Attached as Exhibit 3 is a true and correct copy of "Exhibit E-1 – Lease of Meeting Space" to the Amended and Restated Master Development Agreement Between Greater Boise Auditorium District and KC Gardner Company, L.C.
6. Attached as Exhibit 4 is a true and correct copy of "Exhibit E-2 – Option to Purchase Meeting Space" to the Amended and Restated Master Development Agreement Between Greater Boise Auditorium District and KC Gardner Company, L.C.

Further, your affiant sayeth naught.

DATED this 13th day of February, 2015

RUNFT & STEELE LAW OFFICES, PLLC

By: _____

JOHN L. RUNFT

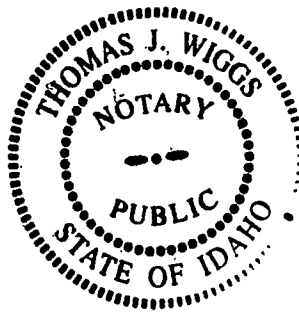
Attorney for Respondent David Frazier

STATE OF IDAHO)

:ss

County of Ada)

SUBSCRIBED AND SWORN unto me this 13th day of February 2015.



Notary Public for the State of Idaho

Residing at:

Boise, ID

My Commission Expires:

07.19.2017

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 13th day of February 2015, a true and correct copy of the **AFFIDAVIT OF JOHN L. RUNFT IN SUPPORT OF RESPONDENT'S BRIEF IN OPPOSITION TO MEMORANDUM IN SUPPORT OF PETITION FOR JUDICIAL CONFIRMATION** was served upon opposing counsel as follows:

Donald E. Knickrehm
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RUNFT & STEELE LAW OFFICES, PLLC

By: _____


JOHN L. RUNFT

Attorney for Respondent David Frazier

Exhibit 1

**AMENDED AND RESTATED
MASTER DEVELOPMENT AGREEMENT
BETWEEN GREATER BOISE AUDITORIUM DISTRICT
AND KC GARDNER COMPANY, L.C.**

AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT

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AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT (hereinafter, the “**Development Agreement**”) is made and entered into effective the 20th day of November, 2014, by and between the Greater Boise Auditorium District, a governmental subdivision of the State of Idaho and a body corporate with all the powers of a public or quasi-public corporation (the “**District**”) and KC Gardner Company, L.C., a Utah limited liability company (“**Gardner**”). This Development Agreement amends and restates that Development Agreement dated as of July 9, 2014, as amended, by and between the District and Gardner.

1. The Project.

1.1 Definitions. Except where the context indicates otherwise, capitalized terms used herein shall have the respective meanings set forth below:

1.1.1. “Buildings”: The Clearwater Building and the Centre Building, located as shown on the Site Plan, and as depicted and described in the Schematic Plans.

1.1.2. “Site Plan”: That certain Site Plan drawing attached to this Master Development Agreement as **Exhibit “B”**.

1.1.3. “Schematic Plans”: Those certain schematic plans labeled “Updated Colored Floor Plans 6-26-14” prepared by Babcock Design Group, dated 6/25/14, including sheets A1.0.0, A1.1.0, A1.2.0, A1.3.0, A1.4.0 and A1.5.0, together with the “Narrative Program for Meeting Room Facilities and Centre Facilities” attached hereto as Schedule 1.

1.1.4. “District Facilities”: The “Centre Facilities” and the “Meeting Room Facilities”.

1.1.5. “Centre Facilities”: A commercial kitchen, a ballroom (with ballroom typical free span high ceiling configuration featuring moveable walls), and ancillary spaces including ground floor entry, lobby, stairs, elevators, escalators, prefunction areas, storage areas, restrooms, a connecting sky bridge to the fourth floor of the Clearwater Building and a sky bridge at the second floor level at the southwest corner of the Centre Building connecting to an adjacent structure to be acquired by the District. The “Centre Facilities” comprise approximately fifty-two thousand (52,000) square feet of floor area in the Centre Building, as depicted on the Schematic Plans.

1.1.6. “Meeting Room Facilities”: Meeting rooms on the fourth floor of the Clearwater Building, with some moveable soundproof walls and fourteen (14) foot ceiling heights, together with a working kitchen, restrooms, hallways and other ancillary facilities, comprising approximately twenty-two thousand, Five Hundred Thirty-Seven (22,537) square feet of floor area, as depicted in the Schematic Plans.

1.1.7. **"Tenant Improvements"**: (Defined in **Exhibit "TI"** attached hereto, with inclusions and exclusions.)

1.2 The Property. Gardner is the owner of certain real property located at 101 S. Capitol Boulevard, in the City of Boise, County of Ada, State of Idaho, which property (the **"Property"**) is particularly described in **Exhibit "A"** attached hereto and incorporated herein by this reference.

1.3 The Plans. Gardner intends to develop the Property generally as shown on the site plan attached hereto as **Exhibit "B"**, as the City Center Plaza, to include (inter alia) two (2) Buildings, referred to as the Clearwater Building and the Centre Building (shown on the Site Plan and depicted and described in the Schematic Plans).

1.4 The District Facilities. The District desires to have Gardner construct new convention center facilities (the Centre Facilities and the Meeting Facilities, sometimes collectively referred to as the **"District Facilities"**) in the Clearwater Building and the Centre Building, and Gardner desires to construct the same and sell the Centre Facilities to the District, and sell (or lease) the Meeting Room Facilities to the District.

1.5 The Project. The development and construction of the Buildings and the District Facilities is the Project. The District and Gardner hereby agree to undertake the Project on the terms and conditions hereinafter set forth.

1.6 Gardner Affiliates. Gardner shall have the right to transfer its rights under this Development Agreement, including the right to develop the Project, to an affiliated entity that Gardner has a majority ownership interest in and that Gardner controls (the **"Gardner Affiliate"**). The Gardner Affiliate for the Project will be K.C. Gardner Riverwoods, LLC, an Idaho limited liability company. Wherever the term "Gardner" is used herein, such term shall include the Gardner Affiliate together with any other affiliate, nominee, assignee, or successor in interest as herein provided. Additionally, upon recordation of the condominium documents as set forth in Section 2.1 below, that the Gardner Affiliate will convey the units comprising the District Facilities to City Center Plaza Meeting, LLC, an Idaho limited liability company, that is a special purpose entity that has among its members the Gardner Affiliate and has among its managers Gardner.

1.7 District Assignment. The District intends to assign its right to purchase the Centre Facilities (as such purchase right is hereinafter provided) to Capital City Development Corporation (the Urban Renewal Agency of Boise City, Idaho), and Gardner hereby consents to such assignment.

1.8 The Parties. The District and Gardner are collectively the **"Parties"** hereunder.

2. Project Documents.

To facilitate the development of the Project as set forth herein, the Parties have agreed to the form of the following documents ("**Project Documents**"), which are to be executed in conjunction with Gardner undertaking the Project.

2.1 Condominium Declaration. The Parties acknowledge that Gardner is constructing the Project as part of a larger mixed use development on the Property as the City Center Plaza. To facilitate the development of the Project, and the conveyance of the Centre Facilities and the Meeting Room Facilities to the District (or District's permitted assignee), Gardner will create one or more condominiums within the Property and the improvements to be constructed thereon. The Parties agree that as to the Meeting Room Facilities and the Centre Facilities, the forms of the declarations and plats creating the condominiums will be subject to mutually agreed upon refinement, adjustment, and modification throughout the development of the Project and City Center Plaza. Gardner shall develop the Project as set forth herein and will create condominium regimes and multiple units within those regimes comprising the Project for purposes of sale or lease to the District as set forth herein. The District's approval of the final form of the condominium documents, in writing, is required. Provided, such approval shall not be unreasonably withheld or delayed.

2.2 Purchase and Sale Agreement. Gardner and the District shall execute and enter into a Purchase and Sale Agreement (the "**PSA**") for the Centre Facilities providing that Gardner shall sell to the District and the District shall purchase from Gardner the Centre Facilities. The PSA shall be substantially in the form attached hereto as **Exhibit "D"**. The PSA shall include the right of the District to assign it and the right to purchase therein provided to the Capital City Development Corporation.

2.3 Lease Agreement; Option to Purchase. Gardner and the District shall execute and enter into a lease, and a parallel option to purchase the Meeting Room Facilities, providing that Gardner shall lease to the District and the District shall Lease from Gardner the Meeting Room Facilities, and further providing the District the option to elect to purchase the Meeting Room Facilities from Gardner in lieu of lease. The lease shall be in the form of **Exhibit "E-1"** attached hereto ("**Lease**"), and the option to purchase shall be in the form of **Exhibit "E-2"** ("**Option**").

2.4 Incorporation. The Parties acknowledge that the Project Documents are an important and integral part of the development, construction and disposition of the Project. This Master Development Agreement is also a Project Document. The Project Documents set forth the Parties' respective duties, rights and obligations with regard to the development, construction and disposition of the Project.

2.5 Interpretation of Project Documents. The Project Documents shall be interpreted consistent with the following provisions:

2.5.1 The intention of the Project Documents is to require complete, correct and timely execution and completion of the Project. Any work required by the Project Documents as necessary to complete the Project and produce the intended result shall be provided by Gardner in keeping with the Project Budget, attached hereto as **Exhibit "F"**. The Project Documents are intended to be an integral whole and shall be interpreted as internally consistent. Work required by any page, part or portion of the Project Documents shall be performed as if it has been set forth on all pages, parts or portions of the Project Documents. The Project Documents may be modified only by an Amendment, as defined in Section 9.7.

2.5.2 Consistent with the Project Documents, development and construction of the Project shall be procured by Gardner through a registered, independent general contractor. The person or entity providing these services shall be referred to as the **"General Contractor"**. These services shall be procured pursuant to a separate agreement between Gardner and the General Contractor. The General Contractor shall be Engineered Structures, Inc. ("ESI").

2.5.3 **"Work"** as used herein and in the Project Documents means all labor, materials, equipment, supervision, supplies, facilities, tools, transportation, and services, for the whole or a designated part of the Project, to be provided by Gardner (or pursuant to Gardner's direction by the General Contractor, or any subcontractor, sub-subcontractor or other entity for whom Gardner or the General Contractor is responsible) to complete the Project, which is required, necessary, implied or reasonably inferable to construct the whole or a designated portion of the Project and to complete all Work in accordance with the Project Documents. Work also includes, but is not limited to, the fulfillment of all duties and responsibilities of Gardner as provided by the Project Documents.

2.6 Execution of Project Documents. The Parties shall cause the PSA, the Lease and the Option to be executed within three (3) business days following approval of the Final Plans and Specifications and the Final Project Budget, as those terms are defined below. Within three (3) business days following recording of the condominium plat and the condominium declaration (so long as such recording is completed following the approval of the Final Plans and Specifications and the Final Project Budget) defining and creating the units comprising the District Facilities the PSA, the Lease and the Option shall be amended to include the platted descriptions of the units comprising the District Facilities.

2.7 Statute of Frauds Not Applicable. The District, Gardner and the Gardner Affiliate expressly agree that the Statute of Frauds is not applicable in defeat of this Development Agreement, acknowledging that the District Facilities are adequately identified so as to avoid ambiguity or confusion, while acknowledging the ultimate requirement of condominiumization. The District Facilities are to be constructed and located as shown in the Schematic Plans. The District Facilities include all rights of the owner and occupant of the units comprising same as set forth in the condominium plat and the condominium declaration for the City Center Plaza Condominium to be executed and recorded.

3. Joint Financing Obligations.

The District, Gardner and the Gardner Affiliate acknowledge that due to the complexity of the

development of the Project, their respective obligations hereunder, and the timing for completion of the construction of the Project, that financing of the construction and development of the Project necessitates their cooperative efforts to facilitate satisfactory financing. The Documents related to this Project as set forth in Article 2 will require their joint efforts to satisfy certain obligations related to the lender financing of the development and construction of the Project and the development of City Center Plaza. Due to the complexity of developing City Center Plaza, Gardner Company may utilize one or more banks or other financial entities to finance City Center Plaza's initial development and to provide permanent financing for City Center Plaza, including the Project. All such lenders are potential financing entities are referred to hereafter collectively as the "**Lender**".

3.1 District's Obligations.

3.1.1 Security Deposit/Calculation of Damage. To facilitate the financing and development of the Centre Facilities, Gardner requires the District to make certain financial commitments at certain milestones in the development of the Project. Upon Gardner's submittal of the application for a building permit for the core and shell elements of the Centre Facilities to the City of Boise and delivery of written notice to the District of the same (but in no event prior to November 1, 2014) the District shall deposit with Gardner the sum of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) ("**First Deposit**"). This First Deposit is a security deposit to assure the District's performance of its obligation to purchase the Centre Facilities as required herein and in the PSA. Gardner shall provide a letter of credit in favor of the District in form satisfactory to the District, in the amount of the First Deposit as security for Gardner's use of the First Deposit and performance of its obligations hereunder, and to assure repayment of the Centre Deposit as hereinbelow provided (if repayment is required). Such letter of credit shall be provided through the date of closing of the purchase of the Centre Facilities, and Gardner shall renew, extend, or obtain such future letters of credit as may be necessary to satisfy such condition. Even though deposited as a security deposit, Gardner may utilize any portion of the First Deposit in construction at such time as the Final Plans and Specifications (as defined below) have been finally agreed to and approved in writing by the District.

Within three (3) business days following the recording of a condominium plat creating the units defining the Centre Facilities (but in no event prior to July 1, 2015), the parties shall amend the PSA, to include the final legal descriptions of the actual condominium units comprising the Centre Facilities, and the District shall deposit an additional sum of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) ("**Second Deposit**"). The Second Deposit shall be held in an escrow account, in an impound pursuant to an Impound/Escrow Agreement between the Parties and Fidelity Investment. The First Deposit and the Second Deposit shall be referred to collectively as the "**Centre Deposit**," and serves solely as security for the District's performance of its purchase obligation for the Centre Facilities upon completion of construction by Gardner.

The Centre Deposit is intended to provide assurance to Gardner and its lenders that if the District failed to proceed to close on the purchase of the Centre Facilities, that Gardner would have funding available to convert the same from their specialized use. As such, the

Centre Deposit shall be utilized and applied as follows: (a) If the District assigns its rights to CCDC to purchase all of the Centre Facilities upon their completion as set forth herein, then upon CCDC's payment of the Purchase Price for the Centre Facilities as set forth in the PSA, Gardner shall refund the First Deposit to the District, and the Second Deposit, together with all other amounts in the escrow impound account with Fidelity Investments shall be released to the District; (b) If the District does not make such assignment of its rights to CCDC and the District purchases the Centre Facilities upon their completion as set forth herein, then the First Deposit shall be credited against the Purchase Price, as such term is defined in the PSA and in conjunction with the Closing of the purchase of the Centre Facilities by the District, the Second Deposit and all other amounts in the escrow impound account with Fidelity Investments shall be released to the District; and (c) If CCDC (as assignee of the District) or the District fails to purchase the Centre Facilities upon completion of the Centre Facilities as set forth herein, then, in addition to any other remedies hereunder and the PSA, Gardner may retain the Centre Deposit.

Gardner shall provide written notice to the District of the issuance of the building permit for the construction of the core and shell of the Centre Facilities. If Gardner fails to commence construction of the Centre Facilities within sixty (60) days after the date of the issuance of a building permit for the construction of the core and shell of the Centre Facilities, or if Gardner breaches its obligations under this Development Agreement beyond all applicable notice and cure periods, then First Deposit and the Second Deposit shall be immediately refunded and paid over to the District.

Gardner and the District agree to the specific performance of this Development Agreement and the PSA. Alternatively, if it is determined that damages are appropriate, then notwithstanding anything in this Development Agreement to the contrary, in no event will the either party be liable to the other under this Development Agreement or under the PSA for any damages in excess of the amount of the Purchase Price. Further, Gardner acknowledges and agrees that all liability of the District under this Development Agreement will expire upon the closing of the purchase of the Centre Facilities by the District or its assignee.

3.1.2 Subordination of Interest in Meeting Room Facilities. The District acknowledges that if it fails to purchase the Meeting Room Facilities at the time that the certificate of occupancy is issued for the Project, and proceeds with the lease of the same instead, then Gardner and the Gardner Affiliate will be required to obtain permanent financing for the Meeting Room Facilities, as the case may be, secured by a deed of trust encumbering the Meeting Room Facilities and that the District will consent to and subordinate its interest in the Meeting Room Facilities to that of the Lender. The District shall provide such consent, acknowledgment and subordination as may be reasonably required to facilitate financing of the Project. This provision is not applicable to the Centre Facilities.

3.2 Gardner Obligations.

3.2.1 Gardner shall obtain the required construction financing for the Project subject to the District's performance. Gardner shall undertake the construction and development and completion in timely fashion of the Project consistent with all covenants for the benefit of the Lender related to the financing of the Project, and consistent with all covenants herein and in the Project Documents with the District.

3.3 Joint Obligations.

3.3.1 The District, Gardner and the Gardner Affiliate acknowledge that they will be required to take future actions to create legal parcels of record by condominiumizing the Project to facilitate the District's purchase of the described Centre Facilities and Meeting Room Facilities.

3.3.2 The District, Gardner and the Gardner Affiliate all further acknowledge and agree that the Lender may impose additional reasonable obligations upon their respective performance under the Project Documents, including, but not limited to, requiring notice of any party's default under any of the Project Documents; granting the Lender a security interest in the Property, the Project, and the Buildings.

3.3.3 The District, Gardner and the Gardner Affiliate all further acknowledge and agree that they shall cooperatively modify the Project Budget and the Construction Schedule as defined in Article 4 below, as may be necessary from time to time to permit the construction of the Project within the District's financing.

4. Design and Development of Project and Construction of Improvements.

4.1 Project Design. The Parties have approved the Schematic Plans for the Buildings, and the District Facilities. Upon execution of this Development Agreement by the Parties, Gardner shall authorize the "**Project Architect**" (Babcock Design Group) retained by Gardner to proceed with final design and preparation of detailed plans and specifications (collectively, the "**Final Plans And Specifications**") for the construction of the Buildings and of the District Facilities, subject to the terms, conditions and requirements hereinafter set forth. The Final Plans And Specifications shall be consistent and compatible with the Schematic Plans, with any material deviations requiring the approval of the District, not to be unreasonably withheld.

4.1.1 It is the intention, understanding and agreement of the Parties that the District Facilities shall be constructed, and the work shall include turnkey completed facilities, ready for occupancy and use by the District, with all Tenant Improvements constructed, installed and finished (subject to specific exceptions and/or exclusions as set forth in the "Tenant Improvements" definition, attached hereto as Exhibit "TI", and incorporated herein by this reference).

4.1.2 The District intends to and will retain its own independent consulting architect (the "**District Architect**") to advise the District with regard to the plans and

specifications for the District Facilities. Upon retention by the District of the District Architect, the District shall provide to Gardner the name and all necessary contact information for the District Architect. The Parties recognize and acknowledge that the District Facilities will have and present unique design and specification requirements. Gardner and the Project Architect shall work cooperatively with the District Architect, consulting with the District Architect and providing plans and specifications as prepared, in a timely fashion to the District Architect so that the District Architect can have full opportunity to advise the District, Gardner and the Project Architect of any and all recommendations with regard to the design, the plans and the specifications for the Buildings and the District Facilities. Ultimately, the District shall have the right, prior to commencement of construction of the Buildings and the District Facilities, to approve the Final Plans And Specifications, such approval not to be unreasonably withheld or delayed.

4.2 Budget and Schedule.

4.2.1 Gardner has selected Engineered Structures Incorporated ("ESI") as its General Contractor for the Project. Based upon the Schematic Plans, Gardner and ESI have completed a preliminary estimation of the cost of the Project, and have developed a preliminary budget for the Project ("**Project Budget**") which shall be subject to modification upon prior written approval of Gardner and the District as set forth below; and a construction schedule for the Project ("**Construction Schedule**"). The Project Budget is attached hereto as **Exhibit "F"** and the Construction Schedule is attached hereto as **Exhibit "G"**.

4.2.2 The Parties agree that the Purchase Price for each of the respective Centre Facilities and the Meeting Room Facilities shall be determined and established by the final Project Budget as agreed upon by the Parties. As the plans and specifications are developed, refined and finalized (and ultimately approved by the District), Gardner and ESI shall refine the Work costs, and provide such detail and back up for such costs as may reasonably be required by the District and the District Architect. The Parties and ESI shall work jointly in good faith to modify the Project Budget and Construction Schedule as necessary and neither party shall unreasonably withhold or condition consent to modifications to the Project Budget or Construction Schedule, where such modifications are reasonably required to satisfy the District's requirements for the Project.

4.2.3 The Parties acknowledge that the Project Budget, the Construction Schedule, and any design or construction contracts Gardner enters into with the General Contractor or the design professional, related to the Project shall be modified, including increases, prior to determination of the Final Project Budget pursuant to section 4.2.4, if

(a) The District directs a change in the Project that increases the cost of design or construction for the Project;

(b) Gardner encounters subsurface or concealed conditions on the Property, including hazardous materials, that increases the cost of any design services or construction;

(c) Gardner incurs unavoidable increased costs related to the design or construction of the Project as a direct result of changes, in applicable laws, codes and ordinances, such as changes in life-safety building codes; zoning laws; taxes and fees applicable to the Project; or environmental regulations; and

(d) Emergencies occur that increase the cost of design or construction for the Project.

4.2.4 Upon completion of the Final Plans and Specifications, the Project Budget shall be updated as the **"Final Project Budget"** and shall be presented by Gardner for approval by the District, such approval not to be unreasonably withheld or delayed. The Final Project Budget shall be in the same format as the Budget attached hereto as **Exhibit "F"**, with such additional detail as the District may reasonably request. The Budget shall show a final cost of the work for the Centre Facilities and separately for the Meeting Room Facilities. It is the intention and agreement of the Parties that the Final Project Budget shall be on a cost plus fee basis, with a Developer's Fee of five percent (5%) on total actual costs. The Final Project Budget total sum shall be a guaranteed maximum price (**"GMP"**). The books and records (including all supplier and subcontractor supply agreements and contracts, and all work orders, change orders and invoices) shall be made available to the District and its agents for review, upon reasonable notice. Gardner and ESI shall continually seek to value engineer the Project and reduce the costs of the Work (without adversely impacting the quality or design in the Project). To the extent reductions in the costs of the Work are realized after the GMP has been established, Gardner shall be entitled to a savings bonus equal to fifty percent (50%) of the amount by which the final cost of the Work is less than the GMP.

4.2.5 Gardner acknowledges and agrees that the anticipated date of substantial completion shall be August 31, 2016 (**"Targeted Date of Substantial Completion"**). **"Substantial Completion"** shall mean the stage in the progress of the Project, or any designated portion of the Project when the Project is sufficiently complete in accordance with the Project Documents so that the District can occupy or utilize the Project, or a designated portion thereof, for its intended use.

4.2.6 By executing this Development Agreement Gardner confirms that the Targeted Date of Substantial Completion is a reasonable period for performing all Work associated with the Project assuming that the District does not require material changes to the scope of the Project that would modify the Work as set forth herein.

4.2.7 The Project shall not be considered fully complete until the occurrence of the following:

(a) A final certificate of occupancy has been issued by the authority having jurisdiction, and

(b) The District agrees in writing that any and all remaining punchlist items have been completed to the District's satisfaction. Gardner shall have 90 days from

Targeted Date of Substantial Completion, to comply with both of these items. If final completion is not achieved within 90 days of the Targeted Date of Substantial Completion, the District may, at its own discretion, perform whatever tasks necessary to complete the above Work, and Gardner shall pay the District for those costs.

(c) Prior to the District exercising its rights under 4.2.7 (b), it shall provide a minimum of ten (10) days written notice to Lender.

4.3 Design and Construction.

4.3.1 Agreements. Gardner shall enter into a design contract with Project Architect to undertake the design of the Project consistent with the Project Budget and Construction Schedule, attached hereto and incorporated herein. The design contract shall be substantially in the form attached hereto as **Exhibit "H" ("Design Contract")**. Gardner warrants that Project Architect is appropriately licensed in the state of Idaho. Gardner shall enter into a construction contract with ESI to undertake the development of the Project consistent with the Project Budget and Construction Schedule. The construction contract with the General Contractor shall be substantially in the form attached hereto as **Exhibit "I" ("Construction Contract")**. Gardner warrants that the General Contractor and any subcontractors shall be appropriately registered to perform the Work outlined herein and shall indemnify and hold harmless the District, its directors, officers, employees and agents from performance of Work by a person, company, corporation or entity not so registered. The Parties acknowledge that the Design Contract and Construction Contract are incorporated by reference and that upon execution they shall be deemed to be included in the Project Documents.

4.3.2 Responsibility for Subcontractors. Gardner shall ensure that the Construction Contract with the General Contractor shall ensure that the General Contractor shall be responsible to the District for acts and omissions of the subcontractors, sub-subcontractors, materialmen, suppliers, and their agents and employees, and any other persons or entities performing portions of the Work for or on behalf of the Gardner or any of its subcontractors or sub-subcontractors, or claiming by, through or under Gardner, and for any damages, losses, costs and expenses resulting from such acts or omissions.

4.3.3 Responsibility To Pay For Elements Of The Work And Overtime. Unless otherwise provided in the Project Documents, the General Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Project. Should the Project Documents require Work to be performed after regular working hours or should the General Contractor elect to perform Work after regular hours, the additional cost of such Work shall be borne by the General Contractor.

4.3.4 Responsibility For Labor Issues. Whenever any provisions of the Project Documents conflict with any agreements or regulations of any kind in force among members of any trade association, union or council, which regulate what Work shall be included in the work of particular trades, Gardner shall make all necessary arrangements with the General

contractor to reconcile any such conflict without delay or cost to the District and without recourse to the District.

4.3.5 Disciplined And Skilled Employees. Gardner shall require the General Contractor to enforce strict discipline and good order among its employees, subcontractors and other persons carrying out the Work for or on behalf of the General Contractor and shall ensure its subcontractors do not permit employment of unfit persons or persons not skilled in the tasks assigned to them.

4.3.6 Permits And Fees. Consistent with the Project Budget and the Project Documents, all permits and governmental fees, licenses, inspections and all other consents for construction necessary for proper execution and completion of the Project which are customarily secured after execution of the Project Documents and which are legally required, shall be secured and paid for by Gardner. Gardner shall deliver all original permits, licenses and certificates to the District upon completion of the Project.

4.3.7 Legal Notices. Gardner shall require the General Contractor to perform the Work in compliance with and give notices required by, laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.

4.3.8 Superintendent. Gardner shall require the General Contractor to employ a competent superintendent and necessary assistants who shall be in attendance at the Project during performance of the Work. The superintendent shall represent General Contractor and information and communications given to the superintendent shall be as binding as if given to the General Contractor.

4.3.9 Construction Schedule. All Work shall be performed consistent with the Construction Schedule, a true and complete copy being attached hereto as **Exhibit "G."** The Construction Schedule shall not exceed time limits provided in the Project Documents, shall be revised as required herein and at appropriate intervals as required by the conditions of the Work and the Project, shall be related to the entire Project, and shall provide for expeditious and practicable execution of the Work. The Construction Schedule shall not be revised without prior review and approval of the District, except as provided herein. The Construction Schedule shall be reviewed every thirty (30) days and updated versions shall be submitted to the District. If any updated version of the Construction Schedule indicates that the Date of Substantial Completion for the Work will be beyond the Date of Substantial Completion established herein, then the Gardner and the General Contractor shall submit to the District for its review and approval a narrative description of the means and methods which the General Contractor intends to employ to expedite the progress of the Work to ensure timely completion of the Work by the Date of Substantial Completion. To ensure such timely completion, the General Contractor shall take all necessary action including, without limitation, increasing the number of personnel and labor on the Project and implementing overtime and double shifts.

4.3.10 Project Records. Gardner shall maintain for the District at the Project, or at such other location as reasonably acceptable to the District, one record copy of any drawings, specifications, addenda, change orders and other contract or subcontract amendments, in good order and marked currently to record changes and selections made during construction, and one record copy of all approved shop drawings, product data, samples and similar required submittals. These shall be available to the District and shall be delivered to the District upon final completion of the Work.

4.3.11 Finished Product. Gardner shall require the General Contractor to ensure that all cutting or patching required for performance and completion of the Work in accordance with the Project Documents. All areas requiring cutting and patching shall be restored to a completely finished condition acceptable to the District.

4.3.12 Site Maintenance. Gardner shall require the General Contractor to use its best efforts to prevent and to control dust and shall be responsible for overall cleanliness and neatness of the Work. At completion of the Project, Gardner shall require the General Contractor to remove from and about the Project waste materials, rubbish, the General Contractor's tools, construction equipment, machinery and surplus materials. If the General Contractor fails to clean up the Project as provided herein, the District may do so and the cost thereof shall be charged to Gardner.

4.3.13 Access To The Work. Upon reasonable prior notice, Gardner and the General Contractor shall allow the District access to the Project and surrounding area during all portions and stages of the Work.

4.3.14 Indemnification. To the fullest extent permitted by law, Gardner, either through itself or others, shall indemnify and hold harmless the District, the District's officers, directors, members, consultants, agents and employees (the Indemnitees) from all claims for bodily injury and property damage other than to the Work itself and other property required to be insured, including reasonable attorneys' fees, costs and expenses, that may arise from the performance of the Work, but only to the extent caused by the negligent acts or omissions of Gardner, Subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Gardner shall not be required to indemnify or hold harmless the Indemnitees for any negligent acts or omissions of the Indemnitees.

4.3.15 Tests And Inspections. If the Project Documents or any laws, statutes, ordinances, building codes, rules, regulations or orders of any governmental body or public or quasi-public authority having jurisdiction over the Work or the Project require any portion of the Work to be inspected, tested or approved, Gardner shall give the District timely notice thereof so the District, and if requested by the District, it may observe such inspection, testing or approval.

4.3.15.1 If the design professional or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not

included herein, Gardner shall give timely written notice to the District of when and where tests and inspections are to be made so that the District may be present for such procedures.

4.3.15.2 Gardner shall obtain and promptly deliver to the District all required certificates of testing, inspection or approval, unless otherwise required by the Project Documents.

4.3.15.3 Tests or inspections of the Work or Project shall be scheduled and conducted so as to avoid unreasonable delay in the Work.

4.3.16 Policies Of Employment. Gardner, and Gardner shall require the General Contractor its subcontractors and sub-subcontractors shall comply with all federal, state and local laws and regulations regarding employment, discrimination and affirmative action.

4.3.17 Safety Of Persons And Property. Gardner shall require the General Contractor to be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work in accordance with the Project Documents. Gardner shall require the General Contractor to take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

4.3.17.1 General Contractor's employees and the employees of subcontractors and sub-subcontractors and invitees on the Project or otherwise engaged in performing the Work and other persons who may be affected thereby;

4.3.17.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off Property, under care, custody or control of Gardner, the General Contractor, or any subcontractors; and,

4.3.17.3 other property adjacent to the Property and designated area for the Work, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement as part of the Work.

4.3.18 Gardner shall require the General Contractor to give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. Gardner shall provide all facilities and shall follow all procedures required by the Occupational Safety and Health Act (OSHA) including, but not limited to, providing and posting all required placards and notices, and shall otherwise be responsible for complying with all other mandatory safety laws.

4.3.19 Gardner shall require the General Contractor to erect and maintain, and, as appropriate, require its subcontractors to also erect and maintain, as required by existing

conditions and performance hereunder, reasonable safeguards for safety and protection, including posting gender neutral danger signs and other warnings against hazards, promulgating safety regulations and notifying users of adjacent sites and utilities.

4.3.20 When use or storage of explosives or other hazardous materials or equipment or unusual methods, if any, are necessary for execution of the Work, Gardner shall give the District reasonable advance notice and shall exercise reasonable care and execute such activities under supervision of properly qualified personnel.

4.3.21 Gardner shall require the General Contractor to promptly remedy, or cause to be remedied, damage and loss to property referred to herein.

4.3.22 Gardner shall require the General Contractor to designate a responsible member of General Contractor's organization whose duty shall be the prevention of accidents. This person shall be the General Contractor's superintendent unless otherwise designated by the General Contractor.

4.3.23 Gardner shall require the General Contractor to promptly report in writing to the District all accidents arising out of or in connection with the Work which causes death or significant personal injury, giving full details and statements of any witnesses.

4.3.24 When required by law or for the safety of the Work, Gardner shall require the General Contractor to shore up, brace, underpin and protect foundations and other portions of existing structure(s) which are in any way affected, or potentially affected, by the Work.

4.3.25 If any hazardous material, including asbestos or polychlorinated biphenyl (PCB), is encountered on the Property or adjoining property, Gardner shall require the General Contractor, upon recognizing the condition, to immediately stop Work in the affected area and report the condition to the District in writing. The Construction Schedule and the Date of Substantial Completion shall be extended for such periods of time as the Work is stopped. The District shall obtain the services of a licensed laboratory to verify the presence or absence of any hazardous material and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume.

4.4 Emergencies. Gardner shall require the General Contractor in an emergency affecting safety of persons or property, to act, at General Contractor's discretion, to prevent threatened damage, injury or loss.

4.5 Uncovering Work. If a portion of the Work is covered contrary to the District request or contrary to the requirements of the Project Documents, and the District makes a written request setting forth the need or justification for the uncovering or examination of such covered portion, then to such extent as is commercially reasonable and necessary, such portion thereof shall be uncovered for examination and shall be replaced at the Gardner's expense without adjustment to the Date of Substantial Completion or Project Budget. If a portion of the

Work has been covered which the District has not specifically requested to examine prior to its being covered, the District may request to see such Work and it shall be uncovered by Gardner. If such Work or Owner Furnished Item is in accordance with the Project Documents, costs of uncovering and replacement shall, by appropriate change order, be at the District's expense. If such Work is not in accordance with the Project Documents, costs of uncovering and correction shall be at Gardner's expense unless the condition was caused by the District.

4.6 Correcting Work. Gardner shall require the General Contractor to promptly correct Work rejected by the District that is not reasonably consistent with the requirements of the Project Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the design professional's services and expenses made necessary thereby, shall be at the expense of the party undertaking the correction.

4.7 Acceptance Of Nonconforming Work. The District may, at its sole option, elect to accept Work that is not reasonably consistent with the requirements of the Project Documents, in which case the Project Budget shall be adjusted as is appropriate and equitable.

4.8 Correction Of Work After Substantial Completion. If, within one (1) year after the Date of Substantial Completion of the Work (unless otherwise provided in any Certificate of Substantial Completion approved by the parties, or within such longer period of time as may be provided by law or in equity, or by terms of an applicable special warranty required by the Project Documents), any of the Work is found to be inconsistent with the requirements of the Project Documents, Gardner shall require the General Contractor to correct it promptly at the Gardner's sole expense after receipt of written notice from the District. The District shall give such notice promptly after discovery of the condition by the District. This obligation shall survive acceptance of the Work under the Project Documents and termination of Project Documents. The one-year period for correction of Work shall be extended with respect to portions of such Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. If nonconforming Work is not corrected within a reasonable time during that period after receipt of notice from the District, the District may correct it. Establishment of the one-year period for correction of Work as described in this Paragraph relates only to the specific obligation to correct the Work, and has no relationship to the time within which the general obligation to comply with the Project Documents may be enforced, or to warranties, if any provided in the Project Documents or the time within which proceedings may be commenced to establish liability with respect to the performance of obligations under the Project Documents. The obligations and liability, if any, with respect to any of the Work found to be inconsistent with the requirements of the Project Documents discovered after the one-year correction period shall be determined in accordance with Idaho law.

5. Coordination of Building and Site Work Construction. The Parties shall cooperate with each other, as well as the contractor, design professionals and their respective agents to facilitate the construction and development of the Project to minimize interference with adjoining

properties while ensuring that the work associated with the Project proceeds as set forth in Article 4 above.

6. Force Majeure. No Party, shall be considered in breach or default of its obligations with respect to the preparation of the Project for redevelopment or the commencement and completion of construction of the improvements, in the event of forced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; natural disasters; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; lack of materials or labor at commercially reasonable prices or in commercially reasonable quantities; adverse economic conditions; governmental restrictions or priority; unusually severe weather; acts of another party not within its control; environmental analysis, or removal of hazardous or toxic substances; acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of either party shall not excuse performance by that party); or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform. The time for the performance of the obligations shall be extended for the period of delay, as mutually determined by the parties, if the party seeking the extension shall request it in writing of the other party within thirty (30) days after the beginning of the forced delay. Times of performance under this Agreement may also be extended in writing by the Parties.

7. Notices. Any notice, demand, request, invoice, bill or other instrument which may be or is required to be given under this Development Agreement or the Project Documents shall be delivered in person, via nationally recognized overnight courier, or sent by United States certified or registered mail, postage prepaid, to as set forth herein as applicable. Notices shall be in writing unless oral notice is expressly permitted by this Lease and shall be deemed given on the date immediately following deposit with the overnight courier or upon actual receipt, if earlier. A party may change its notice address as set forth herein by delivering notice thereof to the other party. Notices shall be delivered as follows:

Gardner:

K.C. Gardner Company, L.C.
101 S. Capitol Blvd. Suite 1200
Boise, Idaho 83702
Attention: Thomas Ahlquist

The District:

Greater Boise Auditorium District
850 W. Front Street
Boise, ID 83702
Attention: Pat Rice

With copy to:

Don Knickrehm
Givens Pursley LLP
601 W. Bannock Street
Boise, ID 38701

8. Default. No party shall be deemed to be in default under this Development Agreement except upon the expiration of thirty (30) days from receipt of written notice from the other party specifying the particulars in which such party has failed to perform its obligations under this Development Agreement, unless such party, prior to expiration of said thirty (30) day period, has rectified the particulars specified in said notice of default. Upon the occurrence of any default, the non-defaulting party shall have all rights and remedies available to it at law or in equity. In addition to the remedies set forth in this Development Agreement, each party shall have all other remedies provided by law or equity to the same extent as if fully set forth herein word for word. No remedy available to any party shall exclude any other remedy available to such party under the Development Agreement or under law or equity. All remedies shall be cumulative.

9. General Provisions.

9.1 Reliance by Parties. It is of the essence of this Development Agreement that the construction of the improvements contemplated herein and the performance of each Party's responsibilities is of substantial economic significance to the other Party and that the failure of either party to perform at the time and in the manner contemplated herein shall result in substantial direct and consequential damages to the other Party.

9.2 Waiver of Jury Trial. **TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE CLOSING OR ANY TERMINATION OF THIS AGREEMENT.**

9.3 Applicable Law. The laws of the State of Idaho shall govern the interpretation and enforcement of this Agreement.

9.4 Not a Partnership. The provisions of this Development Agreement are not intended to create, nor shall they in any way be interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

9.5 No Third Party Beneficiary Rights. Except as specifically provided herein, nothing contained in the Project Documents shall create, or be interpreted to create, privity or any other contractual relationship between any persons or entities other than the District and Gardner. Except as provided herein and in the Agreement, there are no third-party beneficiaries to the Project Documents. Nothing contained in the Project Documents shall create or give to third parties any claim or right of action against the District or Gardner, except as specifically provided in the Project Documents.

9.6 Successors and Assigns. The terms, covenants, conditions and agreements contained herein shall constitute covenants running with the land and shall be binding upon, and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties hereto. In the event of any sale or conveyance of a party's interest in its Parcel, said party shall remain liable to the other party for the performance of said party's obligations hereunder.

9.7 Modification. Neither this Development Agreement nor the Project Documents shall be modified without the written agreement of all of the parties hereto.

9.8 Captions and Headings. The captions and headings in this Development Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

9.9 Entire Agreement. This Development Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Development Agreement shall be construed as a whole and not strictly for or against any party.

9.10 Time for Performance. Time is of the essence of this Development Agreement.

9.11 Time Period Computation. All time periods in this Development Agreement shall be deemed to refer to calendar days unless the time period specifically references business days.

9.12 Construction. In construing the provisions of this Development Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

9.13 Joint and Several Obligations. In the event any party hereto is composed of more than one (1) person, the obligations of said party shall be joint and several.

9.14 No Waiver. A Party's failure to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that said party may have and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms, covenants, conditions or agreements contained herein by the same or any other party hereto.

IN WITNESS WHEREOF, the Parties have executed this Development Agreement as of the date first set forth above.

GARDNER:

KC Gardner Company, L.C., a Utah limited liability company *gwk*

By: *Christian Gardner*
Name: *Christian Gardner*
Title: Manager

THE DISTRICT:

Greater Boise Auditorium District, a governmental subdivision of the State of Idaho

By: *Jim Walker*
Name: Jim Walker
Title: Chairman

**CONSENTED TO BY
GARDNER AFFILIATE:**

KC Gardner Riverwoods, L.C., a Utah limited liability company *Card*

By: _____ KC
Gardner Company, L.C., a Utah limited liability company

By: *Christian Gardner*
Name: *Christian Gardner*
Title: Manager

List of Exhibits and Schedules:

Exhibit "A" – Legal Description of Property
Exhibit "B" – Site Plan
Exhibit "C" – Reserved
Exhibit "D" –Purchase And Sale Agreement
Exhibit "E-1" – Lease of Meeting Space
Exhibit "E-2" – Option to Purchase Meeting Space
Exhibit "F" – Project Budget
Exhibit "G" – Construction Schedule
Exhibit "H" – Design Contract
Exhibit "I" – Construction Contract
Exhibit "TI" – Tenant Improvements (with inclusions and exclusions)
Schedule 1 – Narrative Program for Boise Center Facilities Improvements and Schematic Plans

Exhibit 2

EXHIBIT "D" –PURCHASE AND SALE AGREEMENT

PURCHASE AND SALE AGREEMENT FOR CENTRE FACILITIES

THIS PURCHASE AND SALE AGREEMENT FOR CENTRE FACILITIES (this "**Contract**"), is executed as of _____, 2015 (the "**Effective Date**") by and between **City Center Plaza Meeting, LLC**, an Idaho limited liability company ("**Seller**"), and **Greater Boise Auditorium District**, a governmental subdivision of the State of Idaho and a body corporate with all the powers of a public or quasi-municipal corporation ("**Buyer**").

In and for the consideration of the payment of purchase price as hereinafter set forth, Buyer and Seller hereby agree as follows:

1. Purchase.

Seller (or Seller's affiliate) is developing certain improvements, including but not limited to a building containing ballroom space, commercial kitchen and ancillary spaces, which spaces are condominium units, common areas and limited common areas within the building known as the "Centre Building", as further defined in Exhibit D (the "**Centre Facilities**"). Seller hereby agrees to sell, and Buyer agrees to purchase, the Centre Facilities subject to the terms and conditions hereof. All capitalized terms used and not defined herein shall have the meanings set forth on **Exhibit "D"**, attached hereto, incorporated herein by this reference.

2. Purchase Price.

The purchase price for the Centre Facilities is [\$_____] ("**Purchase Price**"), payable by wire transfer of immediately available federal funds on or before the Closing Date (as defined in Section 6 hereof).

3. Legal Description of Centre Facilities.

The Centre Facilities are legally described in **Exhibit "A"** attached hereto, incorporated herein by this reference.

4. Buyer's Conditions.

Notwithstanding the execution of this Contract, Buyer shall not be obligated to proceed to Closing until each of the following conditions are satisfied:

(a) **Construction.** Seller shall have completed construction of the Centre Building and the Centre Facilities in accordance with the final plans and specifications approved by both the Buyer and the Seller in writing on _____, 2015 (the "**Final Plans and Specifications**").

(b) **Condition of Title.** Title to the Centre Facilities shall be conveyed by a Special Warranty Deed, in the form attached hereto and incorporated herein as **Exhibit "B"**; free and clear of all liens, encumbrances, easements, assessments, restrictions, or other exceptions to title caused or suffered by Seller or anyone claiming by or through Seller (the "**Encumbrances**") except for (i) the exceptions set forth in **Exhibit "C"** attached hereto; or (ii) any Encumbrance

created pursuant to the requirements of the Development Agreement ("**Permitted Exceptions**"). Upon execution of this Contract, Buyer shall obtain or cause Escrow Holder to obtain a commitment for title insurance ("**Title Commitment**") with instructions that the original Title Commitment and exception documents be delivered to Buyer with copy to Seller. Buyer shall have ten (10) days after receipt of the Title Commitment, to review the condition of title set forth in the Title Commitment and to deliver notice to Seller in writing of any objections Buyer may have, with reasons specified, of anything contained in the Title Commitment that is not a Permitted Exception as set forth above. In the event of an objection by Buyer, Closing shall be continued until such date as Buyer and Seller can resolve and eliminate any item that is not a Permitted Exception as set forth above. Seller shall cause (at Seller's sole cost and expense) any exception objected to by Buyer, which is not a Permitted Exception and that is either a monetary lien or that would constitute a material impairment to Buyer's title or use and enjoyment of the Centre Facilities, to be timely eliminated and removed.

(c) **Title Insurance.** Escrow Holder shall be prepared to obtain, issue and deliver to Buyer, upon closing, a standard owner's policy of title insurance, in the full amount of the Purchase Price, insuring fee simple title to the Centre Facilities to be vested in Buyer, subject only to the Permitted Exceptions.

4A. Buyer's Right of Assignment. Buyer intends to assign this Contract and its rights hereunder to Capital City Development Corporation (the Urban Renewal Agency of the City of Boise, Idaho) prior to Closing; and, upon such assignment, Capital City Development Corporation will close the purchase of the Centre Facilities herein contemplated. Buyer is hereby granted such right of assignment, and Seller covenants and agrees to accept and recognize such assignment and to sell the Centre Facilities to Capital City Development Corporation.

5. [Intentionally Omitted].

6. **Closing.**

Buyer shall open escrow with First American Title Insurance Company, 800 W. Main Street, Suite 910, Boise, Idaho 83702, Attn: Kimberly Yelm ("**Escrow Holder**"). Closing shall occur thirty (30) days from the date Seller delivers a Certificate of Occupancy to Buyer issued by the City of Boise, Idaho ("**Closing Date**") upon the delivery of the Purchase Price to Seller and the delivery of the required documents to Buyer. On or before the Closing Date, Seller shall deposit with Escrow Holder a duly executed and acknowledged Special Warranty Deed conveying the Centre Facilities to Buyer with instructions to deliver the Special Warranty Deed to Buyer when Escrow Holder is in a position to disburse to Seller the entire Purchase Price. On or before the Closing Date, Buyer shall deposit with Escrow Holder the Purchase Price with instructions to disburse the entire Purchase Price to Seller upon delivery of the Special Warranty Deed. If the Closing Date, determined in accordance with the foregoing, is a Saturday, Sunday or legal holiday, then the Closing Date shall be the next succeeding day that is not a Saturday, Sunday or legal holiday.

7. **Costs and Expenses.**

Upon Closing, Buyer shall pay the Escrow (Closing) Fee and any other costs or charges assessed by Escrow Holder related to the Closing, and shall pay the title insurance premium for the Owner's Policy. Seller shall pay any and all costs for the release of any monetary lien

encumbering the Centre Facilities, any recording costs, and any accrued real property taxes through the date of Closing. All other utility expense and or assessment shall be prorated through the date of Closing.

8. Centre Deposit.

Prior to the date hereof, Buyer has deposited with Seller the sum of Two Million Five Hundred Thousand Dollars (\$2,500,000.00)(the "First Deposit"). Within three (3) business days following the recording of a condominium plat creating the units defining the Centre Facilities (but in no event prior to July 1, 2015), the parties shall amend this Agreement to include the final legal descriptions of the actual condominium units comprising the Centre Facilities, and the Buyer shall deposit an additional sum of Two Million Five Hundred Thousand Dollars (\$2,500,000.00)("Second Deposit"). The Second Deposit shall be held in an escrow account, in an impound pursuant to an Impound/Escrow Agreement between the parties and Fidelity Investment. The First Deposit and the Second Deposit shall be referred to collectively as the "Centre Deposit," and serves solely as security for the Buyer's performance of its purchase obligation for the Centre Facilities upon completion of construction by Seller. The Centre Deposit shall be utilized and applied as follows: (a) If the Buyer assigns its rights to CCDC to purchase all of the Centre Facilities upon their completion as set forth herein, then upon CCDC's payment of the Purchase Price for the Centre Facilities, Seller shall refund the First Deposit to the Buyer, and the Second Deposit, together with all other amounts in the escrow impound account with Fidelity Investments shall be released to the Buyer; (b) If the Buyer does not make such assignment of its rights to CCDC and the Buyer purchases the Centre Facilities upon their completion as set forth herein, then the First Deposit shall be credited against the Purchase Price, and in conjunction with the Closing of the purchase of the Centre Facilities by the Buyer, the Second Deposit and all other amounts in the escrow impound account with Fidelity Investments shall be released to the Buyer; and (c) If CCDC (as assignee of the Buyer) or the Buyer fails to purchase the Centre Facilities upon completion of the Centre Facilities as set forth herein, then, in addition to any other remedies hereunder, Seller may retain the Centre Deposit..

9. Default.

Time is of the essence of this Contract. Upon the failure of either party to perform their obligations hereunder, such party shall be deemed to be in default only after receiving written notice failing to cure the deficient performance within ten (10) days. Upon a default occurring, the nondefaulting party may at its election:

(a) Terminate this Contract; or

(b) If the defaulting party is Seller, Buyer may seek specific performance of this Contract, or, alternatively, if in Buyer's reasonable judgment specific performance is not a practical remedy, then Buyer may seek and recover monetary damages, including exemplary damages.

(c) If the defaulting party is Buyer, Seller may obtain specific performance of this Contract, or alternatively may seek and recover monetary damages, to which the Centre Deposit would be applied, provided, however, in no event will Seller be entitled to any damages in excess of the amount of the Purchase Price. Buyer acknowledges that the Centre Facilities are a unique element of the project and that they are being constructed solely for the use and

occupancy of Buyer and that Seller would incur significant extraordinary expense to make the Centre Facilities useable for another purpose; and therefore, the Buyer and Seller agree that the remedies of specific performance or monetary damages as set forth above, are appropriate and reasonable.

10. Notices.

Any notice, demand, request, invoice, bill or other instrument which may be or is required to be given under this Contract shall be delivered in person, via nationally recognized overnight courier, or sent by United States certified or registered mail, postage prepaid, to as set forth herein as applicable. Notices shall be in writing unless oral notice is expressly permitted by this Lease and shall be deemed given on the date immediately following deposit with the overnight courier or upon actual receipt, if earlier. A party may change its notice address as set forth herein by delivering notice thereof to the other party. Notices shall be delivered as follows:

SELLER:

City Center Plaza Meeting, LLC
Attention: Christian Gardner
90 South 400 West, Suite 360
Salt Lake City, UT 84101

BUYER:

Greater Boise Auditorium District
PO Box 1400
Boise, ID 83701

with a copy to:

KC Gardner Company, L.C.
Attention: General Counsel
101 S. Capitol Boulevard, Suite 1200
Boise, ID 83702

Donald E. Knickrehm
Givens Pursley
601 W. Bannock Street
Boise, ID 83702

11. Commission.

Buyer and Seller agree that neither has been represented by any broker, finder or other party entitled to a real estate brokerage commission, finder's fee or other compensation. Each Party agrees to indemnify, defend and hold the other Party harmless from and against any commissions, fees or other compensation which is claimed by any third Party with whom the indemnifying Party has allegedly dealt.

12. General.

(a) Successors. This Contract shall be binding upon the heirs, successors, assigns and personal representatives of the parties hereto.

(b) Headings. Section headings are for convenience only and shall not be deemed to not define, limit or construe the contents of any terms, consents or conditions in this Contract.

(c) Entire Agreement. This Contract, together with the exhibits attached hereto, contains the entire agreement between the parties hereto and supersedes all prior understandings and agreements, oral or written, with respect to the subject matter hereof. The provisions of this

Contract shall be construed as a whole and not strictly for or against any party, and may not be modified or amended in any manner except by an instrument in writing signed by both Buyer and Seller.

(d) Governing Law. This Contract shall be governed by and construed in accordance with the laws of the state in which the Centre Facilities are located.

(e) Joint and Several Obligations. In the event any party hereto is composed of more than one (1) person, the obligations of such party shall be joint and several.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract as of the date first written above.

SELLER: CITY CENTER PLAZA MEETING, LLC,
a Utah limited liability company, by its
Manager

KC Gardner Company, L.C., a Utah
limited liability company

By: _____
Name: _____
Title: Manager

BUYER: GREATER BOISE AUDITORIUM
DISTRICT, a governmental subdivision of
the State of Idaho and a body corporate with
all the powers of a public or quasi-public
corporation

By: _____
Jim Walker

Its: Chairman

By: _____
Pat Rice
Executive Director

List of Exhibits and Schedule

Exhibit "A" Legal Description of Centre Facilities

Exhibit "B" Form of Special Warranty Deed

Exhibit "C" Permitted Exceptions

Exhibit "D" Definitions

EXHIBIT "A" – LEGAL DESCRIPTION OF PROPERTY

EXHIBIT "B" – FORM OF SPECIAL WARRANTY DEED

EXHIBIT 'C'
PERMITTED EXCEPTIONS

EXHIBIT 'D'

DEFINITIONS

"Centre Building" means that building to be constructed by Seller or its affiliate to the south of the US Bank building located at 101 S. Capitol Boulevard, in the City of Boise, County of Ada, State of Idaho.

"Centre Facilities" means a commercial kitchen, a ballroom (with ballroom typical free span high ceiling configuration featuring moveable walls), and ancillary spaces including ground floor entry, lobby, stairs, elevators, escalators, prefunction areas, storage areas, restrooms, a connecting sky bridge to the fourth floor of the Clearwater Building and a sky bridge at the second floor level at the southwest corner of the Centre Building connecting to an adjacent structure to be acquired by the district. The "Centre Facilities" comprise approximately fifty-two thousand (52,000) square feet of floor area in the Centre Building. The Centre Facilities are legally described on Exhibit "A".

"Clearwater Building" means that building to be constructed by Seller or its affiliate to the west of the US Bank building located at 101 S. Capitol Boulevard, in the City of Boise, County of Ada, State of Idaho.

Exhibit 3

EXHIBIT "E-1" – LEASE OF MEETING SPACE

GP: 6/27/14
Gardner Revisions 6-28-2014

LEASE AGREEMENT
(ANNUAL APPROPRIATION)

LANDLORD: CITY CENTER PLAZA
MEETING, LLC, AN IDAHO
LIMITED LIABILITY COMPANY

-- TENANT: GREATER BOISE AUDITORIUM
DISTRICT

LEASE SUMMARY

City Center Plaza – Clearwater Building

1. "Landlord": City Center Plaza Meeting, LLC, an Idaho limited liability company.
2. "Tenant": Greater Boise Auditorium District, a governmental subdivision of the State of Idaho and a body corporate with all the powers of a public or quasi-municipal corporation.
3. "Rentable Area": 22,537 square feet.
4. "Leased Premises": Suite 400.
5. "Parking": None
6. "Term": Twenty (20) years (subject to termination as set forth in Section 2.2)
7. "Commencement Date": See Section 2.1.
8. "Basic Annual Rent": An amount equal to the product of nine and one-half of one percent (9.5%) and the Costs of Construction (as defined in Article III, Section 3.2 below).
9. "Escalations": Two percent (2%) per year compounded.
10. "Tenant's proportionate share": 11.81% (Unit containing Leased Premises: 25,158 gross area/total gross area of all Units within Clearwater Building: 212,950 square feet). See Section 4.1.
11. "Landlord's address for notice":

City Center Plaza Meeting, LLC
Attention: Christian Gardner
90 South 400 West, Suite 360
Salt Lake City, UT 84101

With Copy To

KC Gardner Company, L.C.
Attention: General Counsel
101 S. Capitol Boulevard, Suite 1200
Boise, ID 83702

or at such other place as Landlord may hereafter designate in writing.

12. "Master Development Agreement": That certain Master Development Agreement executed and entered into by and between KC Gardner Company, L.C., a Utah limited liability company and Tenant herein, dated _____, 2014, incorporated herein by this reference.

13. "Tenant's address for notice (if other than the Leased Premises)":

Greater Boise Auditorium District
PO Box 1400
Boise, ID 83701

With Copy To

Donald E. Knickrehm
Givens Pursley
601 W. Bannock Street
Boise, ID 83702

14. "Broker(s)": Tenant's Broker: None

Landlord's Broker: None

16. "Guarantor" or "Guarantors": None

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GUARANTY Yes _____ No [X]

EXHIBIT "A" DESCRIPTION OF PROPERTY

DESCRIPTION

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EXHIBIT "B"	DESCRIPTION OF LEASED PREMISES
EXHIBIT "C"	CONSTRUCTION AND/OR FINISHING OF IMPROVEMENTS TO LEASED PREMISES
EXHIBIT "D"	ACKNOWLEDGMENT OF COMMENCEMENT DATE AND ESTOPPEL CERTIFICATE
EXHIBIT "E"	RULES AND REGULATIONS

LEASE AGREEMENT

(Annual Appropriation)

CLEARWATER BUILDING

THIS LEASE AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this "Lease") is made and entered into as of this ____ day of _____, 20__, by and between CITY CENTER PLAZA MEETING, LLC (the "Landlord"), and GREATER BOISE AUDITORIUM DISTRICT (the "Tenant").

For and in consideration of the rental to be paid and of the covenants and agreements set forth below to be kept and performed by Tenant, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Leased Premises (as hereafter defined) and certain other areas, rights and privileges for the term, at the rental and subject to and upon all of the terms, covenants and agreements hereinafter set forth.

I. LEASED PREMISES

1.1 Description of Leased Premises. The "Leased Premises" consist of 22,537 square feet of rentable area within the Clearwater Building (hereinafter defined) on the fourth (4th) floor thereof, improved and finished as shown and described in the plans and specifications therefor approved in writing by Landlord and Tenant with all appurtenant space, facilities and improvements, designated as "Approved Final Plans, Fourth Floor Clearwater Building" (the "Plans"), incorporated herein by this reference as if set forth herein in full. The Leased Premises and the Clearwater Building are part of a larger development to be constructed ("City Center Plaza") on that certain parcel of real property (the "Property") legally described on Exhibit "A" attached hereto, which Property currently includes the office tower known as the U.S. Bank Building. The Clearwater Building is that certain nine-story office tower to be constructed to the west of and adjacent to the U.S. Bank Building on the Property, as shown on the Plans. The parties hereto acknowledge, covenant and agree as follows:

(a) This is a custom build-to-suit lease agreement. Prior to Tenant taking possession of the Leased Premises, Landlord will execute and record for City Center Plaza a plat and declaration creating a condominium (hereafter "Condominium Plat" and "Condominium Declaration") to define multiple condominium units ("Unit(s)"), as hereinafter provided, to refine the definition of the Leased Premises;

(b) There is no ambiguity as to the Leased Premises to be constructed and leased by Landlord to Tenant, but condominiumization is required to facilitate eventual intended legal conveyance of parts of the City Center Plaza Condominium; and

(c) The parties hereto expressly and without reservation waive any application of the Statute of Frauds in defeat of this Agreement, acknowledging that the Leased Premises is adequately identified so as to avoid ambiguity or confusion, while acknowledging the ultimate requirement of condominiumization. The Clearwater Building is that certain building to be constructed and located as shown in the plans and specifications prepared by Babcock Design Group dated _____. The Leased Premises includes all rights of the owner and occupant of the Premises in and to Common Area and Limited Common Area for the Leased Premises as set forth in the Condominium Plat and the Condominium Declaration for the City Center Plaza Condominium to be executed and recorded.

(d) It is the intention and agreement of the Parties that they shall work cooperatively together to finalize and file the Condominium Declaration and Condominium Plat prior to completion of Landlord's construction obligations. Additional sub-declarations may be recorded after the Condominium Plat and the Condominium Declaration to more precisely define the condominium elements allocable to Units within each of the Clearwater Building and the Centre Building.

1.2 Landlord's Construction Obligations. The obligation of Landlord to perform the work and supply the necessary materials and labor to prepare the Leased Premises for occupancy is described in detail in the plans and specifications attached hereto as Schedule 1 to Exhibit "C", which is by reference incorporated herein. Landlord shall expend all funds and do all acts required of them to complete construction of the Leased Premises as described in Exhibit "C" (delivering, the Leased Premises ready for occupancy by Tenant) and shall perform or have the work performed promptly and diligently in a first class and workmanlike manner.

1.3 Construction of Clearwater Building and Leased Premises. The Leased Premises and the Clearwater Building in which the Leased Premises are located are not currently in existence. Landlord shall, at its own cost and expense: (a) construct and substantially complete such Clearwater Building and the Leased Premises; (b) cause all of the construction which is to be performed by Landlord as set forth on Exhibit "C" to the Lease to be substantially completed; and (c) cause the Leased Premises to be ready for Tenant's occupancy as soon as reasonably possible. Landlord anticipates that it will complete such construction and preparation not later than August 31, 2016 (the "Targeted Substantial Completion Date"). If the Landlord has not fulfilled its obligation to substantially construct the Clearwater Building and the Leased Premises upon the expiration of the Targeted Substantial Completion Date and such additional time as may constitute permissible delay under Section 22.2 of the Lease, Landlord shall be subject to and shall pay to Tenant as and for delay compensation the sum of One Hundred Dollars (\$100.00) per day for each day of delay for the first sixty (60) days, and One Thousand Dollars (\$1,000.00) per day for each day of delay thereafter for the second sixty (60) days, and Two Thousand Dollars (\$2,000.00) per day for each day of delay thereafter. Other than the delay compensation above provided, Tenant hereby unconditionally and irrevocably waives any and all claims for actual, consequential, punitive or other damages, costs or expenses, which

Tenant may incur as a result of Landlord's failure to substantially complete the Clearwater Building and the Leased Premises on or before the Targeted Substantial Completion Date.

1.4 Changes to City Center Plaza Condominium. Tenant acknowledges that other than the delivery of and its possession of the Leased Premises as set forth herein, that it has no interest in and no rights to any specific configuration, design, or construction of the City Center Plaza Condominium. Pursuant to the terms of the Condominium Plat and Condominium Declaration, the developer and owner of the City Center Plaza Condominium shall have reserved to itself, its successors and assigns, the general right to develop the City Center Condominium as it determines appropriate. Notwithstanding the foregoing, the configuration design and construction of the Clearwater Building shall substantially confirm to the Schematic Plans (as defined in the Master Development Agreement).

II. TERM

2.1 Commencement; Initial Term. The Initial Term of this Lease will begin on the Commencement Date and, subject to the provisions of this Lease (including Section 2.2 below, shall expire on the twentieth (20th) anniversary date of the Commencement Date. The "Commencement Date" shall be the first to occur of the date Tenant takes possession of the Leased Premises and conducts any business therein, or the date which is thirty (30) days after the Landlord completes construction of the Clearwater Building and the Leased Premises and provides to Tenant a certificate of occupancy for the Leased Premises issued by the City of Boise.

2.2 Limitation of Multiple Year Obligations. It is understood that Tenant is an Idaho governmental entity that is subject to the limitations of Article VIII, Section 3 of the Idaho Constitution. Therefore, notwithstanding any other provision of this Lease, this Lease shall not be interpreted or construed so as to bind or obligate Tenant beyond November 30 of the then-current Lease Year. Tenant reserves the right to terminate this Lease if the Board of Directors of Tenant fails, neglects, or refuses to provide for sufficient funds in its annual operating budget for Tenant to continue payments due hereunder for the following Lease Year. If the Board of Directors of Tenant does not, for any reason, budget sufficient funds in its annual operating budget for the ensuing Lease Year to pay Rent for such Lease Year, Tenant shall provide written notice to Landlord no later than November 20 of the current Lease Year and this Lease shall automatically terminate on the last day of the then current Lease Year without penalty to Tenant. Termination of the Lease as provided in this Section 2.2 shall not constitute a default by Tenant under this Lease. "Lease Year" means the twelve month period of the Tenant's fiscal year (December 1 through November 30), provided however, that the first Lease Year shall actually be the period from the Commencement Date through and including November 30 of the next succeeding fiscal year of the Tenant.

2.3 Construction of Leased Premises. Landlord and Tenant shall work jointly so that the Landlord's Construction Obligations are undertaken and completed in as cost

effective manner as possible in accordance with the budget approved and developed pursuant to the Master Development Agreement.

2.4 Option Existence; Exercise. Landlord and Tenant have simultaneously executed and entered into an "Option to Purchase" agreement, providing to the Tenant serial options to purchase the Leased Premises from Landlord. In the event Tenant exercises the Option to Purchase in accordance with its terms, and acquires fee title to the Unit constituting the Leased Premises, then, in such event, this Lease shall automatically terminate.

III. BASIC RENTAL PAYMENTS

3.1 Basic Annual Rent. Tenant agrees to pay to Landlord as basic annual rent (the "Basic Annual Rent") at such place as Landlord may designate, without prior demand therefore and without any deduction or set off whatsoever, the product of nine and one-half of one percent (9.5%) and the Costs of Construction. The Basic Annual Rent shall be due and payable in equal monthly installments to be paid in advance on or before the first day of each calendar month during the term of the Lease. Commencing on December 1 following November 30 of the first (extended) Lease Year, and on December 1 of each subsequent Lease Year, the Basic Annual Rent shall escalate using a 2% annually compounded rate. Simultaneous with the execution of this Lease, Tenant has paid to Landlord the first month's rent, receipt whereof is hereby acknowledged. In the event the Commencement Date occurs on a day other than the first day of a calendar month, then rent shall be paid on the Commencement Date for the initial fractional calendar month prorated on a per-diem basis (based upon a thirty (30) day month).

3.2 Cost of Construction. For purposes of this Lease, the term "Cost of Construction" shall mean any and all "hard" and "soft" costs and expenditures incurred at any time (and whether before or after the date of this Lease) in connection with the design or construction of Leased Premises, as set forth in the Construction Budget approved by the parties hereto, subject to adjustment as provided for in the Master Development Agreement.

3.3 Monthly Rent Notice and Review of Cost of Construction.

(a) Landlord shall deliver notice to Tenant of Landlord's calculation of the Monthly Rent at the same time Landlord delivers the Certificate of Occupancy issued by the City of Boise for the Leased Premises to Tenant (the "Monthly Rent Notice"). In addition, Tenant acknowledges that all Costs of Construction and other costs and expenses comprising the calculation of Monthly Rent may not be available at the time Landlord delivers the Monthly Rent Notice, therefore, Landlord shall have the right, for a period of one hundred eighty (180) days after Landlord delivers the Monthly Rent Notice, to deliver written notice to Tenant (the "Adjusted Monthly Rent Notice") adjusting Monthly Rent to reflect

additional Costs of Construction and other costs and expenses comprising the calculation of Monthly Rent which were not included in the original Monthly Rent Notice. Tenant shall pay Monthly Rent based on the Adjusted Monthly Rent Notice within thirty (30) days of Tenant's Receipt of the Adjusted Monthly Rent Notice. Tenant may dispute any increase in rent indicated by an Adjusted Monthly Rent Notice by providing a written Notice of Dispute to Landlord within ten (10) days after Tenant's receipt of the Adjusted Monthly Rent Notice. In the event of such dispute, the parties shall meet and endeavor in good faith to resolve such dispute. If the parties are unable to resolve such dispute within thirty (30) days of delivery of Tenant's Notice of Dispute to Landlord, the matter shall be submitted to arbitration in accordance with the applicable Commercial Rules of the American Arbitration Association. Upon determination of any increased rent, the accrued unpaid deficiencies accruing from the date specified in the Adjusted Monthly Rent Notice, if any, shall promptly be paid by Tenant to Landlord. Landlord waives any right to increase Monthly Rent based on additional Costs of Construction not included in the Monthly Rent Notice or an Adjusted Monthly Rent Notice which is delivered within one hundred eighty (180) days of the delivery of the Monthly Rent Notice.

(b) Tenant has the right to audit, at Tenant's expense, Landlord's records for the Costs of Construction and other costs and expenses included in the calculation of Monthly Rent, including all supporting documents, at anytime within two (2) years after Landlord delivers the Monthly Rent Notice. Any such audit by Tenant shall be performed by a certified public accountant or Tenant's in house accountants (collectively, the "CPA") which is not compensated on a contingency basis. Tenant agrees to keep all information thereby obtained by Tenant confidential and to obtain the agreement of its CPA to keep all such information confidential. Tenant shall complete such audit in a commercially reasonable time frame. Tenant shall provide a copy of such CPA confidentiality agreements to Landlord promptly upon request. If, following the date of Landlord's receipt of the results of the audit and any disputed charges (the "Report Date"), Landlord disputes the findings contained therein, and Landlord and Tenant are not able to resolve their differences within thirty (30) days following the Report Date, the dispute shall be resolved by the third party review process as follows: Landlord and Tenant shall each designate an independent certified public accountant, which shall in turn jointly select a third independent Certified Public Accountant (the "Third CPA"). The Third CPA, within sixty (60) days following selection, shall, at Tenant's and Landlord's joint expense (each paying half, unless otherwise provided below), audit the relevant records and certify the proper amount. That certification shall be final and conclusive. If the Third CPA determines that the amount of the Costs of Construction and other costs and expenses included in the calculation of Monthly Rent was incorrect, the appropriate party shall pay to the other party the deficiency or overpayment, as applicable, within thirty (30) days following delivery of the Third Party CPA's decision, without interest, and Monthly Rent shall thereafter be based on the

determination of the Third CPA (plus adjustments for Rent Escalations). If the audit agreed to by Landlord, or the Third CPA's decision, indicates that Landlord has overcharged Monthly Rent by more than four percent (4%) of the Monthly Rent established by such audit or Third CPA's decision, as applicable, Landlord shall pay for all of Tenant's actual out of pockets costs and expenses in conducting such audit and the entire expense of hiring the Third CPA. Tenant waives any right to claim an adjustment to Monthly Rent for any claims not made within two (2) years of the delivery of the Monthly Rent Notice.

3.4 Additional Monetary Obligations. Tenant shall also pay as rent (in addition to the Basic Annual Rent) all other sums of money as shall become due and payable by Tenant to Landlord under this Lease. Landlord shall have the same remedies in the case of a default in the payment of said other sums of money as are available in the case of a default in the payment of one or more installments of Basic Annual Rent.

IV. ADDITIONAL RENT

4.1 Additional Rent. It is the intent of both parties that the Basic Annual Rent herein specified shall be absolutely net to Landlord throughout the term of this Lease. Tenant shall be responsible for the assessments levied against the Unit constituting the Leased Premises pursuant to the Condominium Declaration, and shall contract separately for and provide all required janitorial and maintenance services within the Unit comprising the Leased Premises. Tenant shall also pay all real property taxes assessed against the Unit comprising the Leased Premises directly to the taxing authority. Subject to Tenant's obligations under Article VI, Tenant shall pay to the providing entity all utility services (e.g., electricity, natural gas, or water), which are separately metered to Tenant's Leased Premises and shall pay Tenant's proportionate share of any utilities or services that are not separately metered or provided. If such assessments, utilities, and services are not directly billed to Tenant, then Tenant shall pay for such within thirty (30) days of the receipt of an invoice for the same.

V. USE

5.1 Use of Leased Premises. The Leased Premises shall be used and occupied by Tenant for general meeting space consistent with Tenant's use and utilization of the existing meeting space in the Boise Centre, or for general office purposes only and for no other purpose whatsoever without the prior written consent of Landlord. Food service is allowed to and in the Leased Premises, but no kitchen shall be constructed therein.

5.2 Prohibition of Certain Activities or Uses. Tenant shall not do or permit anything to be done in or about, or bring or keep anything in the Leased Premises or the Property which is prohibited by this Lease or will, in any way or to any extent:

(a) adversely affect any fire, liability, or other insurance policy carried with respect to the Clearwater Building, the Improvements, the Common Areas, the Property, or any of the contents of the foregoing (except with Landlord's express written permission, which will not be unreasonably withheld, but which may be contingent upon Tenant's agreement to bear any additional costs, expenses or liability for risk that may be involved);

(b) obstruct, interfere with any right of, or injure or annoy any other tenant or occupant of the Clearwater Building, the Common Areas, the Improvements, or the Property;

(c) conflict with or violate any law, statute, ordinance, rule, regulation or requirement of any governmental unit, agency, or authority (whether existing or enacted as promulgated in the future, known or unknown, foreseen or unforeseen);

(d) adversely overload the floors or otherwise damage the structural soundness of the Leased Premises or Clearwater Building, or any part thereof (except with Landlord's express written permission, which will not be unreasonably withheld, but which may be contingent upon Tenant's agreement to bear any additional costs, expenses, or liability for risk that may be involved); or

(e) take any action which causes a violation of any restrictive covenants or any other instrument of record applying to the Property.

5.3 Affirmative Obligations with Respect to Use.

(a) Tenant will (i) comply with all governmental laws, ordinances, regulations, and requirements, now in force or which hereafter may be in force, of any lawful governmental body or authorities having jurisdiction over the Leased Premises; (ii) will keep the Leased Premises and every part thereof in a clean, neat, and orderly condition, free of objectionable noise, odors, or nuisances; (iii) will in all respects and at all times fully comply with all health and policy regulations; and (iv) will not suffer, permit, or commit any waste.

(b) At all times during the term hereof, Tenant shall, at Tenant's sole cost and expense, comply with all statutes, ordinances, laws, orders, rules, regulations, and requirements of all applicable federal, state, county, municipal and other agencies or authorities, now in effect or which may hereafter become effective, which shall impose any duty upon Landlord or Tenant with respect to the use, occupation or alterations of the Leased Premises (including, without limitation, all applicable requirements of the Americans with Disabilities Act of 1990 and all other applicable laws relating to persons with disabilities, and all rules and regulations which may be promulgated thereunder from time to time and whether relating to barrier removal, providing auxiliary aids and services or otherwise) and upon request of Landlord shall deliver evidence thereof to Landlord.

5.4 Suitability. Tenant acknowledges that except as expressly set forth in this Lease, neither Landlord nor any other person has made any representation or warranty with respect to the Leased Premises or any other portion of the Clearwater Building, the Common Areas, or the Improvements and that no representation has been made or relied on with respect to the suitability of the Leased Premises or any other portion of the Clearwater Building, the Common Areas, or Improvements for the conduct of Tenant's business. The Leased Premises, Clearwater Building, and Improvements (and each and every part thereof) shall be deemed to be in satisfactory condition unless, within sixty (60) days after the Substantial Completion Date, Tenant shall give Landlord written notice specifying, in reasonable detail, the respects in which the Leased Premises, Clearwater Building, or Improvements are not in satisfactory condition.

5.5 Taxes. Tenant shall pay all taxes, assessments, charges, and fees which during the term hereof may be imposed, assessed, or levied by any governmental or public authority against or upon Tenant's use of the Leased Premises or any personal property or fixture kept or installed therein by Tenant and on the value of leasehold improvements to the extent that the same exceeds Clearwater Building allowances.

VI. UTILITIES AND SERVICE

6.1 Obligation of Landlord. During the term of this Lease, Landlord agrees to cause to be furnished to the Leased Premises at all times required by Tenant the following utilities and services:

- (a) Electricity, water, gas and sewer service.
- (b) Telephone connection, but not including telephone stations and equipment (it being expressly understood and agreed that Tenant shall be responsible for the ordering and installation of telephone lines and equipment which pertain to the Leased Premises).
- (c) Heat and air-conditioning as is reasonably required for the comfortable use and occupancy of the Leased Premises for its intended purposes.
- (d) Security (including the lighting of common halls, stairways, entries and restrooms) to such extent as is usual and customary in similar buildings in Ada County, Idaho.
- (e) Snow removal service.
- (f) Landscaping and grounds keeping service.
- (g) Elevator service.

All utility costs for utilities servicing exclusively the Leased Premises shall be directly metered and billed to Tenant, and shall be paid by Tenant, except for (i) those utility costs related to general building services, such as elevator services, exterior or common area lighting and similar services, which costs shall be included in the costs covered by the assessments levied by the association under the Condominium Declaration or (ii) those utility costs which are not or cannot be separately metered for the Leased Premises or that are not included as costs levied as assessments by the association under the Condominium Declaration, which costs shall be paid by Tenant within thirty (30) days of receipt of same.

6.2 Tenant's Obligations. Tenant shall arrange for and shall pay the entire cost and expense of all telephone stations, equipment and use charges, janitorial services, electric light bulbs (but not fluorescent bulbs used in fixtures originally installed in the Leased Premises) and all other materials and services not expressly required to be provided and paid for pursuant to the provisions of Section 7.1 above.

6.3 Additional Limitations.

(a) Tenant will not, without the written consent of Landlord, which shall not be unreasonably withheld, use any apparatus or device on the Leased Premises (including but without limitation thereto, electronic data processing machines or machines using current in excess of 110 volts) which will in any way or to any extent increase the amount of electricity or water usually furnished or supplied for use on the Leased Premises for the use designated in Section 5.1 above, nor connect with either electrical current (except through existing electrical outlets in the Leased Premises), water pipes, or any apparatus or device, for the purposes of using electric current or water not served by utility lines directly metered to Tenant.

(b) If Tenant shall require water or electric current in excess of that usually furnished or supplied for use of the Leased Premises, or for purposes other than those designated in Section 5.1 above, and such water or current is supplied by other than lines directly metered to Tenant, Tenant shall first procure the consent of Landlord for the use thereof, which consent Landlord may refuse. Landlord may cause a water meter or electric current meter to be installed in the Leased Premises, so as to measure the amount of water and/or electric current consumed for any such use. Tenant shall pay for the cost of such meters and of installation maintenance and repair thereof. Tenant agrees to pay Landlord promptly upon demand for all such water and electric current consumed as shown by said meters at the rates charged for such service either by the city or county in which the Clearwater Building is located or by the local public utility, as the case may be, together with any additional expense incurred in keeping account of the water and electric current so consumed.

6.4 Limitation on Landlord's Liability. Landlord shall not be liable for any failure to provide or furnish any of the foregoing utilities or services if such failure was reasonably beyond the control of Landlord and Tenant shall not be entitled to terminate this

Lease or to effectuate any abatement or reduction of rent by reason of any such failure. In no event shall Landlord be liable for loss or injury to persons or property, however, arising or occurring in connection with or attributable to any failure to furnish such utilities or services even if within the control of Landlord.

VII. MAINTENANCE AND REPAIRS; ALTERATIONS; ACCESS

7.1 Maintenance and Repairs by Landlord. The Leased Premises is a Unit within the City Center Plaza Condominium created pursuant to that certain Condominium Plat filed _____ as Instrument No. _____, official records of Ada County, Idaho, and that certain Declaration of Condominium filed _____ as Instrument No. _____, official records of Ada County, Idaho. The Condominium Association created thereby shall maintain in good order, condition, and repair the City Center Condominium, the Common Areas, and the Improvements except the Leased Premises and those other portions of the Clearwater Building leased, rented, or otherwise occupied by persons not affiliated with Landlord. The Association shall supply normal janitorial and cleaning services reasonably required to keep the Leased Premises, the Clearwater Building, and the Improvements in a clean, sanitary and orderly condition, the cost and expense of which shall be included in Common Area Expenses. Landlord shall have no duty to repair or replace any damage to the Clearwater Building, the Common Areas, the Improvements, or the Leased Premises occasioned by the willful or negligent acts of Tenant or the Tenant Related Parties (as defined in Section 10.1 below).

7.2 Maintenance and Repairs by Tenant. Tenant, at Tenant's sole cost and expense and without prior demand being made, shall maintain the Leased Premises in good order, condition and repair, and will be responsible for the painting, carpeting, or other interior design work of the Leased Premises beyond the initial construction phase as specified in Section 2.4 and Exhibit "C" of the Lease and shall maintain all equipment and fixtures installed by Tenant. If repainting or recarpeting is required and authorized by Tenant, the cost for such are the sole obligation of Tenant and shall be paid for by Tenant immediately following the performance of said work and a presentation of an invoice for payment. Tenant shall in a good and workmanlike manner repair or replace any damage to the Clearwater Building, the Common Areas, the Improvements, or the Leased Premises occasioned by the willful or negligent acts of Tenant or the Tenant Related Parties.

7.3 Alterations. Tenant shall not without first obtaining Landlord's written approval: (a) make or cause to be made any alterations, additions, or improvements; (b) install or cause to be installed any fixtures, signs, floor coverings, interior or exterior lighting, plumbing fixtures, shades or awnings; or (c) make any other changes to the Leased Premises without first obtaining Landlord's written approval, which approval shall not be unreasonably withheld or delayed. The foregoing notwithstanding, if the proposed alteration, addition or improvement is, in Landlord's reasonable judgment, likely to affect the structure of the Clearwater Building or the operation of the electrical, plumbing or HVAC systems (including the use of non specified systems, components, or controls), or otherwise adversely impacts the value of the Clearwater Building, such consent may be

withheld at the sole and absolute discretion of the Landlord; except for the foregoing, Landlord's approval shall not be unreasonably withheld. Tenant shall present to Landlord plans and specifications for such work at the time approval is sought. In the event Landlord consents to the making of any alterations, additions, or improvements to the Leased Premises by Tenant, the same shall be made by Tenant at Tenant's sole cost and expense. All such work shall be done only by contractors or mechanics approved by Landlord, which approval shall not be unreasonably withheld. All such work with respect to any alterations, additions, and changes shall be done in a good and workmanlike manner and diligently prosecuted to completion such that, except as absolutely necessary during the course of such work, the Leased Premises shall at all times be a complete operating unit. Any such alterations, additions, or changes shall be performed and done strictly in accordance with all laws and ordinances relating thereto. In performing the work or any such alterations, additions, or changes, Tenant shall have the same performed in such a manner as not to obstruct access to any portion of the Clearwater Building. Any alterations, additions, or improvements to or of the Leased Premises, including, but not limited to, wallcovering, paneling, and built-in cabinet work, but excepting movable furniture and equipment, shall at once become a part of the realty and shall be surrendered with the Leased Premises unless Landlord otherwise elects at the end of the term hereof.

7.4 Landlord's Access to Leased Premises. Landlord shall have the right to place, maintain, and repair all utility equipment of any kind in, upon, and under the Leased Premises as may be necessary for the servicing of the Leased Premises and other portions of the Clearwater Building. Upon providing adequate notice to Tenant, Landlord shall also have the right to enter the Leased Premises at all times to inspect or to exhibit the same to prospective purchasers, mortgagees, tenants, and lessees, and to make such repairs, additions, alterations, or improvements as Landlord may deem desirable. Notwithstanding the foregoing, Landlord acknowledges that the Leased Premises will sublet by Tenant to convention and meeting users of Tenant's facilities. Landlord shall not, at any time, make entry upon the Leased Premises that would adversely affect or interfere with any sublessee's authorized use of the Leased Premises. Subject to the foregoing, Landlord shall be allowed to take all material upon said Leased Premises that may be required therefor without the same constituting an actual or constructive eviction of Tenant in whole or in part, the rents reserved herein shall in no wise abate while said work is in progress by reason of loss or interruption of Tenant's business or otherwise, and Tenant shall have no claim for damages. During the three (3) months prior to expiration of this Lease or of any renewal term, Landlord may place upon the Leased Premises "For Lease" or "For Sale" signs which Tenant shall permit to remain thereon.

VIII. ASSIGNMENT

8.1 Definitions. As used in this Lease:

(a) "Pledge" means to pledge, encumber, mortgage, assign (whether as collateral or absolutely) or otherwise grant a lien or security interest in this Lease or any

portion of the Leased Premises as security for, or to otherwise assure, performance of any obligation of Tenant or any other person.

(b) "Sublease" means to lease or enter into any other form of agreement with any other person, whether written or oral, which allows that person or any other person to occupy or possess any part of the Leased Premises for any period of time or for any purpose. The term "sublease" shall not include contractual use of the Leased Premises or portions thereof by clients of Tenant in the ordinary course of Tenant's business.

(c) "Transfer" means to sell, assign, transfer, exchange or otherwise dispose of or alienate any interest of Tenant in this Lease, whether voluntary or involuntary or by operation of law including, without limitation: (i) any such Transfer by death, incompetency, foreclosure sale, deed in lieu of foreclosure, levy or attachment; (ii) if Tenant is not a human being, any direct or indirect Transfer of fifty percent (50%) or more of any one of the voting, capital or profits interests in Tenant; and (iii) if Tenant is not a human being, any Transfer of this Lease from Tenant by merger, consolidation, transfer of assets, or liquidation or any similar transaction under any law pertaining to corporations, partnerships, limited liability companies or other forms of organizations.

8.2 Transfers, Subleases and Pledges Prohibited. Except with the prior written consent of Landlord in each instance, Tenant shall not Transfer or Pledge this Lease, or Sublease or Pledge all or any part of the Leased Premises. Consent of the Landlord to any of the actions described in the previous sentence shall be deemed granted and delivered only if obtained strictly in accordance with and pursuant to the procedure set forth in Section 8.3 of this Lease and is memorialized in a writing signed by Landlord that refers on its face to Section 8.3 of this Lease. Any other purported Transfer, Sublease or Pledge shall be null and void, and shall constitute a default under this Lease which, at the option and election of Landlord exercisable in writing at its sole discretion, shall result in the immediate termination of this Lease; provided, if Landlord does not terminate this Lease, it may exercise any other remedies available to it under this Lease or at law or equity. Consent by Landlord to any Transfer, Sublease or Pledge shall not operate as a waiver of the necessity for consent to any subsequent Transfer, Sublease or Pledge, and the terms of Landlord's written consent shall be binding upon any person holding by, under, or through Tenant. Landlord's consent to a Transfer, Sublease or Pledge shall not relieve Tenant from any of its obligations under this Lease, all of which shall continue in full force and effect notwithstanding any assumption or agreement of the person to whom the Transfer, Sublease or Pledge pertains.

8.3 Consent of Landlord Required:

(a) If Tenant proposes to make any Transfer, Sublease or Pledge it shall immediately notify Landlord in writing of the details of the proposed Transfer, Sublease or Pledge, and shall also immediately furnish to Landlord sufficient written information and documentation required by Landlord to allow Landlord to assess the business to be conducted in the Leased Premises by the person to whom the Transfer, Sublease or Pledge is

proposed to be made, the financial condition of such person and the nature of the transaction in which the Transfer, Sublease or Pledge is to occur. If Landlord determines that the information furnished do not provide sufficient information, Landlord may demand that Tenant provide such additional information as Landlord may require in order to evaluate the proposed Transfer, Assignment or Pledge.

(b) Landlord shall have the absolute right to reject any proposed Transfer, Sublease or Pledge under any of the following circumstances:

(i) If, as a result of the Transfer, Sublease or Pledge, Landlord or the Leased Premises would be subject to compliance with any law, ordinance, regulation or similar governmental requirement to which Landlord or the Leased Premises were not previously subject, or as to which Landlord or the Leased Premises has a variance, exemption or similar right not to comply including, without limitation, that certain act commonly known as the "Americans with Disabilities Act of 1990", and any related rules or regulations, or similar state or local laws relating to persons with disabilities.

(ii) A Transfer, Sublease or Pledge to any other person which is the landlord or sublandlord under any leases or subleases for office space within a ten (10) mile radius of the Leased Premises.

(iii) A Transfer, Sublease or Pledge to any other person which is at that time has an enforceable lease for any other space in the Clearwater Building or any prospective tenant with whom the Landlord has, in the prior twelve (12) months negotiated with to lease space in the Clearwater Building.

(iv) A sublease of less than all of the Leased Premises where the configuration or location of the subleased premises might reasonably be determined by Landlord to have any adverse effect on the ability of Landlord to lease remainder of the Leased Premises if the Landlord were to terminate this Lease but agree to be bound by the Sublease.

(v) The person to whom the Transfer, Sublease or Pledge is to be made will not agree in writing to be bound by the terms and conditions of this Lease; provided that the Lease shall not be enforceable against person to whom the Lease or Leased Premises is to be Pledged until after the foreclosure or other realization upon its lien or security interest.

(c) Except as set forth in Section 9.3(b), Landlord's consent shall not be unreasonably withheld, provided that: (i) Tenant promptly provides to Landlord all information requested by Landlord pursuant to Section 9.3(a) and Landlord determines that such information is sufficient to allow Landlord to accurately evaluate the financial condition of the person to whom the Transfer, Sublease or Pledge is to be made; and (ii) Tenant and the person to whom the Transfer, Sublease or Pledge is to be made agree in writing to all of the rights of Landlord set forth in Section 9.4.

8.4 Landlord's Right in Event of Assignment or Sublease.

(a) If Landlord consents in writing to any Transfer or any Sublease, Landlord may collect rent and other charges and amounts due under this Lease from the person to whom the Transfer was made or under the sublease from any person who entered into the Sublease, and Landlord shall apply all such amounts collected to the rent and other charges to be paid by Tenant under this Lease. If Landlord consents in writing to any Pledge of this Lease or any portion of the Leased Premises, and the person to whom the Pledge was made forecloses or otherwise realizes upon any interest in this Lease or in any portion of the Leased Premises, Landlord may collect rent and other charges and amounts due under this Lease from such person, and Landlord shall apply the amount collected to the rent and other charges and amounts to be paid by Tenant under this Lease. Such collection, however, shall not constitute consent or waiver of the necessity of written consent to such Transfer, Sublease or Pledge, nor shall such collection constitute the recognition of such person or any other person as the "Tenant" under this Lease or constitute or result in a release of Tenant from the further performance of all of the covenants and obligations pursuant to this Lease, including the obligation to pay rent and other charges and other amounts due under this Lease.

(b) In the event that any rent or additional consideration payable after a Transfer exceed the rents and additional consideration payable under this Lease, Landlord and Tenant shall share equally in the amount of any excess payments or consideration. In the event that the rent and additional consideration payable under a Sublease exceed the rents and other consideration payable under this Lease (prorated to the space being subleased pursuant to the Sublease), Landlord and Tenant shall share equally in the amount of any excess payments or consideration.

(c) In the event that Tenant shall request that Landlord consent to a Transfer, Sublease or Pledge, Tenant and/or the person to whom the Transfer, Sublease or Pledge was made shall pay to Landlord reasonable legal fees and costs, not to exceed \$5,000.00, incurred in connection with processing of documents necessary to effect the Transfer, Sublease or Pledge. In addition to the foregoing, Landlord's broker or agent shall be entitled to one-third (1/3) of any real estate commission or fee paid to any broker or agent in connection with the Transfer, Sublease or Pledge by Tenant and/or the person to whom any Transfer, Sublease or Pledge is being made.

IX. INDEMNITY AND HAZARDOUS MATERIALS

9.1(a) Tenant's Indemnity. Subject to the provisions of Section 10.4 below and to the fullest extent permitted by law (but subject to the provisions and limitations of the Idaho Tort Claims Act), Tenant shall protect, defend, indemnify and hold harmless Landlord and its affiliates against and from any and all claims, demands, actions, losses, damages, orders, judgments, and any and all costs and expenses (including, without limitation, attorneys' fees and costs of litigation), resulting from or incurred by Landlord

or any affiliate of Landlord on account of any of the following: (a) the use of the Leased Premises by Tenant or by its agents, contractors, employees, servants, invitees, licensees or concessionaires (the "Tenant Related Parties"), the conduct of its business or profession, or any other activity permitted or suffered by Tenant or the Tenant Related Parties within the Leased Premises; or (b) any breach by Tenant of this Lease. Tenant shall defend all suits brought upon such claims and pay all costs and expenses incidental thereto. Notwithstanding the foregoing, Landlord shall have the right, at its option, to participate in the defense of any such suit without relieving Tenant of any obligation hereunder.

9.1(b) Landlord's Indemnity. Subject to the provisions of Section 10.4 below and to the fullest extent permitted by law, Landlord shall protect, defend, indemnify and hold harmless Tenant and its affiliates, guests and invitees against and from any and all claims, demands, actions, losses, damages, orders, judgments, and any and all costs and expenses (including, without limitation, attorneys' fees and costs of litigation), resulting from or incurred by Tenant or any affiliate, guest or invitees of Tenant on account of any of the following: (a) any activity permitted or suffered by Landlord or the Landlord Related Parties within the Leased Premises; or (b) any breach by Landlord of this Lease, such indemnification being limited, however, to contractual damages, and excluding extra contractual remedies and consequential damages. Landlord shall defend all suits brought upon such claims and pay all costs and expenses incidental thereto. Notwithstanding the foregoing, Tenant shall have the right, at its option, to participate in the defense of any such suit without relieving Landlord of any obligation hereunder.

9.2 Notice. Each Party shall give prompt notice to the other Party in case of fire or accidents in the Leased Premises or in the Clearwater Building of which the Leased Premises are a part or of defects therein or in any fixtures or equipment.

9.3(a) Environmental Indemnification. In addition to and without limiting the scope of any other indemnities provided under this Lease, Tenant shall indemnify, defend (with counsel reasonably acceptable to Landlord) and hold harmless Landlord from and against any and all demands, losses, costs, expenses, damages, bodily injury, wrongful death, property damage, claims, cross-claims, charges, action, lawsuits, liabilities, obligations, penalties, investigation costs, removal costs, response costs, remediation costs, natural resources damages, governmental administrative actions, and reasonable attorneys' and consultants' fees and expenses arising out of, directly or indirectly, in whole or in part, or relating to (i) the release of Hazardous Materials (as defined in Section 10.5 below) by Tenant or the Tenant Related Parties, (ii) the violation of any Hazardous Materials laws by Tenant or the Tenant Related Parties, or (iii) the use, storage, generation or disposal of Hazardous Materials in, on, about, or from the Property by Tenant or the Tenant Related Parties (the items listed in clauses (i) through and including (iii) being referred to herein individually as a "Tenant Release" and collectively as the "Tenant Releases").

9.3(b) Environmental Indemnification. In addition to and without limiting the scope of any other indemnities provided under this Lease, Landlord shall indemnify, defend (with counsel reasonably acceptable to Tenant) and hold harmless Tenant from and against any and all demands, losses, costs, expenses, damages, bodily injury, wrongful death, property damage, claims, cross-claims, charges, action, lawsuits, liabilities, obligations, penalties, investigation costs, removal costs, response costs, remediation costs, natural resources damages, governmental administrative actions, and reasonable attorneys' and consultants' fees and expenses arising out of, directly or indirectly, in whole or in part, or relating to (i) the release of Hazardous Materials (as defined in Section 10.5 below) by Landlord or the Landlord Related Parties, (ii) the violation of any Hazardous Materials laws by Landlord or the Landlord Related Parties, or (iii) the use, storage, generation or disposal of Hazardous Materials in, on, about, or from the Property by Landlord or the Landlord Related Parties (the items listed in clauses (i) through and including (iii) being referred to herein individually as a "Landlord Release" and collectively as the "Landlord Releases").

9.4 Definition of Hazardous Materials. The term "Hazardous Materials" shall mean any substance:

(a) which is flammable, explosive, radioactive, toxic, corrosive, infectious, carcinogenic, mutagenic, or otherwise hazardous and which is or becomes regulated by any governmental authority, agency, department, commission, board or instrumentality of the United States, the state in which the Property is located or any political subdivision thereof;

(b) which contains asbestos, organic compounds known as polychlorinated biphenyls; chemicals known to cause cancer or reproductive toxicity or petroleum, including crude oil or any fraction thereof; or which is or becomes defined as a pollutant, contaminant, hazardous waste, hazardous substance, hazardous material or toxic substance under the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901-6992k; the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601-9657; the Hazardous Materials Transportation Authorization Act of 1994, 49 U.S.C. §§ 5101-5127; the Clean Water Act, 33 U.S.C. §§ 1251-1387; the Clean Air Act, 42 U.S.C. §§ 7401-7671q; the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2692; the Safe Drinking Water Act, 42 U.S.C. §§ 300f to 300j-26; the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §§ 11001-11050; and title 19, chapter 6 of the Utah Code, as any of the same have been or from time to time may be amended; and any similar federal, state and local laws, statutes, ordinances, codes, rules, regulations, orders or decrees relating to environmental conditions, industrial hygiene or Hazardous Materials on the Property, including all interpretations, policies, guidelines and/or directives of the various governmental authorities responsible for administering any of the foregoing, now in effect or hereafter adopted, published and/or promulgated;

(c) the presence of which on the Property requires investigation or remediation under any federal, state, or local statute, regulation, ordinance, order, action, policy, or common law; or

(d) the presence of which on the Property causes or threatens to cause a nuisance on the Property or to adjacent properties or poses or threatens to pose a hazard to the health and safety of persons on or about the Property.

9.5 Use of Hazardous Materials. Tenant shall not, and shall not permit any Tenant Related Parties to use, store, generate, release, or dispose of Hazardous Materials in, on, about, or from the Property. Landlord shall not, and shall not permit any Landlord Related Parties to use, store, generate, release, or dispose of Hazardous Materials in, on, about, or from the Property.

9.6 Release of Hazardous Materials. If Tenant discovers that any spill, leak, or release of any quantity of any Hazardous Materials has occurred on, in or under the Leased Premises, Tenant shall promptly notify all appropriate governmental agencies and Landlord. In the event such release is a Tenant Release, Tenant shall (or shall cause others to) promptly and fully investigate, cleanup, remediate and remove all such Hazardous Materials as may remain and so much of any portion of the environment as shall have become contaminated, all in accordance with applicable government requirements, and shall replace any removed portion of the environment (such as soil) with uncontaminated material of the same character as existed prior to contamination. In the event such release is a Landlord Release, Landlord shall (or shall cause others to) promptly and fully investigate, cleanup, remediate and remove all such Hazardous Materials as may remain and so much of any portion of the environment as shall have become contaminated, all in accordance with applicable government requirements, and shall replace any removed portion of the environment (such as soil) with uncontaminated material of the same character as existed prior to contamination. Within twenty (20) days after any such spill, leak, or release, the party responsible for the remediation of such release shall give the other party a detailed written description of the event and of such responsible parties investigation and remediation efforts to date. Within twenty (20) days after receipt, such responsible party shall provide the other party with a copy of any report or analytical results relating to any such spill, leak, or release. In the event of a release of Hazardous Material in, on, or under the Leased Premises by the Tenant Related Parties, Tenant shall not be entitled to an abatement of Rent during any period of abatement.

9.7 Release of Landlord. Landlord shall not be responsible or liable at any time for any loss or damage to Tenant's personal property or to Tenant's business, including any loss or damage to either the person or property of Tenant or Tenant Related Parties that may be occasioned by or through the acts or omissions of persons occupying adjacent, connecting, or adjoining space. Tenant shall store its property in and shall use and enjoy the Leased Premises and all other portions of the Clearwater Building and Improvements at its own risk, and hereby releases Landlord, to the fullest extent

permitted by law, from all claims of every kind resulting in loss of life, personal or bodily injury, or property damage. Notwithstanding the foregoing, Tenant does not release or waive, and fully maintains the right to such legal and equitable relief and recovery of damages from any third party whose acts or omissions may give rise to claims by Tenant against such third party. Landlord warrants and represents that the Leased Premises, the Property and the Clearwater Building are free and clear of released Hazardous Materials as of the Commencement Date.

X. INSURANCE

10.1 Insurance on Tenant's Personal Property and Fixtures. At all times during the term of this Lease, Tenant shall keep in force at its sole cost and expense with insurance companies acceptable to Landlord, hazard insurance on an ["all-risk type"] or equivalent policy form, and shall include fire, theft, extended coverages, vandalism, and malicious mischief. Coverage shall be equal to 100% of the Replacement Cost value of Tenant's contents, fixtures, furnishings, equipment, and all improvements or additions made by Tenant to the Leased Premises. The deductible under such insurance coverage shall not exceed \$5,000.00. Such policy shall name Landlord as Additional Insured and shall provide that coverage for the Additional Insured is primary and not contributory with other insurance. The policy shall provide that such policy not be cancelled or materially changed without first giving Landlord thirty (30) days written notice.

10.2 Property Coverage. Landlord or the Association shall obtain and maintain in force an "all-risk type" or equivalent policy form, and shall include fire, theft, extended coverages, vandalism, and malicious mischief on the Clearwater Building during the term of the Lease and any extension thereof. Landlord may obtain, at Landlord's discretion, coverage for flood and earthquake if commercially available at reasonable rates. Such insurance shall also include coverage against loss of rental income.

10.3 Liability Insurance. During the entire term hereof and at its sole cost and expense, Tenant shall keep in full force and effect a policy of Commercial General Liability Insurance with limits of not less than \$1,000,000 each Occurrence and \$3,000,000 General Aggregate. The policy shall apply to the Leased Premises and all operations of Tenant's business. Such policy shall name Landlord as Additional Insured and shall provide that coverage for the Additional Insured is primary and not contributory with other insurance. The policy shall provide that such policy not be cancelled or materially changed without first giving Landlord thirty (30) days written notice. Tenant shall at all times during the term hereof provide Landlord with evidence of current insurance coverage. All public liability, property damage, and other liability policies shall be written as primary policies, not contributing with coverage which Landlord may carry.

10.4 Waiver of Subrogation. Landlord and Tenant hereby waive all rights to recover against each other, against any other tenant or occupant of the Clearwater Building, and against each other's officers, directors, shareholders, partners, joint venturers,

employees, agents, customers, invitees or business visitors or of any other tenant or occupant of the Clearwater Building, for any loss or damage arising from any cause covered by any insurance carried by the waiving party, to the extent that such loss or damage is actually covered.

10.5 Lender. Any mortgage lender interest in any part of the Clearwater Building or Improvements may, at Landlord's option, be afforded coverage under any policy required to be secured by Tenant hereunder, by use of a mortgagee's endorsement to the policy concerned.

XI. DESTRUCTION

If the Clearwater Building or the Leased Premises shall be damaged by any casualty which is insured against under any insurance policy maintained by Landlord or the Association, Landlord or the Association shall, to the extent of and upon receipt of, the insurance proceeds, repair the portion of the Clearwater Building or the Leased Premises damaged by such casualty. Until such repair is complete, the Basic Annual Rent and Additional Rent shall be abated proportionately as to that portion of the Leased Premises rendered untenable. Any abatement of rent shall end five (5) days after notice by Landlord to Tenant that the Leased Premises have been repaired as required herein. If the damage is caused by the negligence of Tenant or its employees, agents, invitees, or concessionaires, there shall be no abatement of rent. Tenant shall repair and refixture the interior of the Leased Premises in a manner and in at least a condition equal to that existing prior to the destruction or casualty and the proceeds of all insurance carried by Tenant on its property and fixtures shall be held in trust by Tenant for the purpose of said repair and replacement.

XII. CONDEMNATION

12.1 Total Condemnation. If the whole of the Leased Premises shall be acquired or taken by Condemnation Proceeding, then this Lease shall cease and terminate as of the date of title vesting in such Condemnation Proceeding.

12.2 Partial Condemnation. If any part of the Leased Premises shall be taken as aforesaid, and such partial taking shall render the remaining portion unsuitable for the Tenant's business, then this Lease shall cease and terminate as aforesaid. If the Leased Premises remain suitable for the Tenant's business following such partial taking, then this Lease shall continue in effect except that the Basic Annual Rent and Additional Rent shall be reduced in the same proportion that the portion of the Leased Premises (including basement, if any) taken bears to the total area initially demised. Landlord shall, upon receipt of the award, make all necessary repairs or alterations to the Clearwater Building in which the Leased Premises are located, provided that Landlord shall not be required to expend for such work an amount in excess of the amount received by Landlord as damages for the part of the Leased Premises so taken. "Amount received by Landlord" shall mean that part of the award from the Condemnation Proceeding, less any costs or expenses incurred by Landlord in the collection of the award, which is free and clear to Landlord of any collection by mortgage lenders for the value of the diminished fee.

12.3 Landlord's Option to Terminate. If more than twenty percent (20%) of the Clearwater Building shall be taken as aforesaid, Landlord may, by written notice to Tenant, terminate this Lease. If this Lease is terminated as provided in this Section, rent shall be paid up to the day that possession is so taken by public authority and Landlord shall make an equitable refund of any rent paid by Tenant in advance.

12.4 Award. Tenant shall not be entitled to and expressly waives all claim to any condemnation award for any taking, whether whole or partial and whether for diminution in value of the leasehold or to the fee. Tenant shall have the right to claim from the condemning party, but not from Landlord, such compensation as may be recoverable by Tenant in its own right for damages to Tenant's business and fixtures to the extent that the same shall not reduce Landlord's award.

12.5 Definition of Condemnation Proceeding. As used in this Lease the term "Condemnation Proceeding" means any action or proceeding in which any interest in the Leased Premises is taken for any public or quasi-public purpose by any lawful authority through exercise of eminent domain or right of condemnation or by purchase or otherwise in lieu thereof.

XIII. LANDLORD'S RIGHTS TO CURE

13.1 General Right. In the event of Landlord's breach, default, or noncompliance hereunder, Tenant shall, before exercising any right or remedy available to it, give Landlord written notice of the claimed breach, default, or noncompliance. If prior to its giving such notice Tenant has been notified in writing (by way of Notice of Assignment of Rents and Leases, or otherwise) of the address of a lender which has furnished any of the financing referred to in Part XIV hereof, concurrently with giving the aforesaid notice to Landlord, Tenant shall, by certified mail, return receipt requested, transmit a copy thereof to such lender. For the thirty (30) days following the giving of the notice(s) required by the foregoing portion of this Section (or such longer period of time as may be reasonably required to cure a matter which, due to its nature, cannot reasonably be rectified within thirty (30) days), Landlord shall have the right to cure the breach, default, or noncompliance involved. If Landlord has failed to cure a default within said period, any such lender shall have an additional thirty (30) days within which to cure the same or, if such default cannot be cured within that period, such additional time as may be necessary if within such thirty (30) day period said lender has commenced and is diligently pursuing the actions or remedies necessary to cure the breach default, or noncompliance involved (including, but not limited to, commencement and prosecution of proceedings to foreclose or otherwise exercise its rights under its mortgage or other security instrument, if necessary to effect such cure), in which event this Lease shall not be terminated by Tenant so long as such actions or remedies are being diligently pursued by said lender.

13.2 Mechanic's Liens. Should any mechanic's or other lien be filed against the Leased Premises or any part thereof by reason of Tenant's acts or omissions or because of a

claim against Tenant, Tenant shall cause the same to be canceled and discharged of record by bond or otherwise within ten (10) days after notice by Landlord. If Tenant fails to comply with its obligations in the immediately preceding sentence within such ten (10) day period, Landlord may perform such obligations at Tenant's expenses, in which case all of Landlord's costs and expenses in discharging shall be immediately due and payable by Tenant and shall bear interest at the rate set forth in Section 15.3 hereof. Tenant shall cause any person or entity directly or indirectly supplying work or materials to Tenant to acknowledge and agree, and Landlord hereby notifies any such contractor, that: (a) no agency relationship, whether express or implied, exists between Landlord and any contractor retained by the Tenant; (b) all construction contracted for by Tenant is being done for the exclusive benefit of the Tenant; and (c) Landlord neither has required nor obligated Tenant to make the improvements done by the contractor.

XIV. FINANCING; SUBORDINATION

14.1 Subordination. This Lease is and shall continue to be subordinate to any mortgage, deed of trust, or other security interest now existing or hereafter placed on the Landlord's interest in the Property by a mortgage lender (as amended, restated, supplemented, or otherwise modified from time to time, including any refinancing thereof, a "Mortgage"); provided, however, such subordination is subject to the condition that so long as Tenant continues to perform all of its obligations under this Lease its tenancy shall remain in full force and effect notwithstanding Landlord's default in connection with the Mortgage concerned or any resulting foreclosure or sale or transfer in lieu of such proceedings. If requested by a holder of the Mortgage, Tenant agrees at any time and from time to time to execute and deliver an instrument confirming the foregoing subordination. If elected by the holder of a Mortgage, this Lease shall be superior to such Mortgage, in which case Tenant shall execute and deliver an instrument confirming the same. Tenant shall not subordinate its interests hereunder or in the Leased Premises to any lien or encumbrance other than the Mortgages described in and specified pursuant to this Section 15.1 without the prior written consent of Landlord and of the lender interested under each Mortgage then affecting the Leased Premises. Any such unauthorized subordination by Tenant shall be void and of no force or effect whatsoever. Upon the written request of Tenant, Landlord shall obtain a non-disturbance and attornment agreement from any mortgagee holding a mortgage interest to which this Lease is subject, and deliver the same to Tenant.

14.2 Amendment. Tenant recognizes that Landlord's ability from time to time to obtain construction, acquisition, standing, and/or permanent mortgage loan financing for the Clearwater Building and/or the Leased Premises may in part be dependent upon the acceptability of the terms of this Lease to the lender concerned. Accordingly, Tenant agrees that from time to time it shall, if so requested by Landlord and if doing so will not materially or adversely affect Tenant's economic interests hereunder, join with Landlord in amending this Lease so as to meet the needs or requirements of any lender which is considering making or which has made a loan secured by a Mortgage affecting the Leased Premises.

14.3 Attornment. Any sale, assignment, or transfer of Landlord's interest under this Lease or in the Leased Premises including any such disposition resulting from Landlord's default under a Mortgage, shall be subject to this Lease. Tenant shall attorn to Landlord's successor and assigns and shall recognize such successor or assigns as Landlord under this Lease, regardless of any rule of law to the contrary or absence of privity of contract, subject to a non-disturbance and attornment agreement executed and delivered by such successor.

14.4 Financial Information. As a condition to Landlord's acceptance of this Lease, Tenant shall provide financial information sufficient for Landlord to verify the financial condition of Tenant. Tenant hereby represents and warrants that none of such information contains or will contain any untrue statement of material fact, nor will such information omit any material fact necessary to make the statements contained therein misleading or unreliable.

XV. EVENTS OF DEFAULT; REMEDIES OF LANDLORD

15.1 Default by Tenant. Upon the occurrence of any of the following events, Landlord shall have the remedies set forth in Section 15.2:

(a) Tenant fails to pay any installment of Basic Annual Rent or Additional Rent or any other sum due hereunder within ten (10) days after such Rent is due.

(b) Tenant fails to perform any other term, condition, or covenant to be performed by it pursuant to this Lease within thirty (30) days after written notice that such performance is due shall have been given to Tenant by Landlord or; provided, if cure of any nonmonetary default would reasonably require more than thirty (30) days to complete, if Tenant fails to commence performance within the thirty (30) day period or, after timely commencing, fails diligently to pursue such cure to completion but in no event to exceed sixty (60) days.

(c) Tenant or any guarantor of this Lease shall become bankrupt or insolvent or file any debtor proceedings or have taken against such party in any court pursuant to state or federal statute, a petition in bankruptcy or insolvency, reorganization, or appointment of a receiver or trustee; or Tenant petitions for or enters into a voluntary arrangement under applicable bankruptcy law; or suffers this Lease to be taken under a writ of execution.

15.2 Remedies. In the event of any default by Tenant hereunder, Landlord may at any time, without waiving or limiting any other right or remedy available to it, terminate Tenant's rights under this Lease by written notice, reenter and take possession of the Leased Premises by any lawful means (with or without terminating this Lease), or pursue any other remedy allowed by law. Tenant agrees to pay to Landlord the cost of recovering possession of the Leased Premises, all costs of reletting, and all other costs and damages arising out of Tenant's default, including attorneys' fees. Notwithstanding any reentry, the liability of Tenant for the rent reserved herein shall not be extinguished for the balance of the Term,

and Tenant agrees to compensate Landlord upon demand for any deficiency arising from reletting the Leased Premises at a lesser rent than applies under this Lease.

15.3 Past Due Sums. If Tenant fails to pay, when the same is due and payable, any Basic Annual Rent, Additional Rent, or other sum required to be paid by it hereunder, such unpaid amounts shall bear interest from the due date thereof to the date of payment at a fluctuating rate equal to two percent (2%) per annum above the Prime Rate. For purposes of this Lease, "Prime Rate" means the prime rate or base rate reported in the Money Rates column or section of The Wall Street Journal as being the prime rate or base rate on corporate loans at large U.S. money center commercial banks (whether or not such rate has actually been charged by any such bank). If The Wall Street Journal ceases publication of the prime rate or the base rate, "Prime Rate" shall mean the rate of interest from time to time announced by the national bank in the United States doing business in Utah having the largest asset value as its prime rate or base rate. In addition thereto, Tenant shall pay a sum of five percent (5%) of such unpaid amounts of Basic Annual Rent, Additional Rent, or other sum to be paid by it hereunder as a service fee. Notwithstanding the foregoing, however, Landlord's right concerning such interest and service fee shall be limited by the maximum amount which may properly be charged by Landlord for such purposes under applicable law.

XVI. PROVISIONS APPLICABLE AT TERMINATION OF LEASE

16.1 Surrender of Leased Premises. At the expiration of this Lease, except for changes made by Tenant that were approved by Landlord, Tenant shall surrender the Leased Premises in the same condition, less reasonable wear and tear, as they were in upon delivery of possession thereto under this Lease and shall deliver all keys to Landlord. Before surrendering the Leased Premises, Tenant shall remove all of its personal property and trade fixtures and such property or the removal thereof shall in no way damage the Leased Premises, and Tenant shall be responsible for all costs, expenses and damages incurred in the removal thereof. If Tenant fails to remove its personal property and fixtures upon the expiration of this Lease, the same shall be deemed abandoned and shall become the property of Landlord.

16.2 Holding Over. Any holding over after the expiration of the term hereof or of any renewal term with the prior written consent of Landlord shall be construed to be a tenancy from month to month except that Basic Annual Rent shall be increased to an amount equal to 200% of the then Basic Annual Rent plus, and in addition to the Basic Annual Rent, all other sums of money as shall become due and payable by Tenant to Landlord under this Lease and on the terms herein specified so far as possible. Such month-to-month tenancy shall be subject to every other term, covenant, and agreement contained in this Lease. Nothing contained in this Section 16.2 shall be construed as consent by Landlord to any holding over by Tenant, and Landlord expressly reserves the right to require Tenant to surrender possession of the Leased Premises to Landlord as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Section 16.2 shall not be deemed to limit or constitute a waiver of any other rights or remedies of

Landlord provided herein or at law. If Tenant fails to surrender the Leased Premises upon the termination or expiration of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord harmless from all loss, costs (including reasonable attorneys' fees) and liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding tenant founded upon such failure to surrender, and any lost profits to Landlord resulting therefrom.

XVII. ATTORNEYS' FEES

In the event that at any time during the term of this Lease either Landlord or Tenant institutes any action or proceeding against the other relating to the provisions of this Lease or any default hereunder, then the unsuccessful party in such action or proceeding agrees to reimburse the successful party for the reasonable expenses of such action including reasonable attorneys' fees, incurred therein by the successful party.

XVIII. ESTOPPEL CERTIFICATE

18.1 Estoppel Certificate. Tenant shall, within fifteen (15) days after Landlord's request, execute and deliver to Landlord a written declaration, in form and substance similar to Exhibit "D", plus such additional other information as Landlord may reasonably request. Landlord's mortgage lenders and/or purchasers shall be entitled to rely upon such declaration.

18.2 Effect of Failure to Provide Estoppel Certificate. Tenant's failure to furnish any estoppel certificate as required pursuant to Section 18.1 within fifteen (15) days after request therefor shall be deemed a default hereunder and moreover, it shall be conclusively presumed that: (a) this Lease is in full force and effect without modification in accordance with the terms set forth in the request; (b) that there are no unusual breaches or defaults on the part of Landlord; and (c) no more than one (1) month's rent has been paid in advance.

XIX. COMMON AREAS

19.1 Definition of Common Areas. "Common Areas" means all areas, space, equipment, and special services provided for the joint or common use and benefit of the tenants or occupants of the Clearwater Building, as defined in the Condominium Declaration and Plat, the Improvements, and Property or portions thereof, and their employees, agents, servants, patients, customers, and other invitees (collectively referred to herein as "Occupants") including, without limitation, driveways, retaining walls, landscaped areas, serviceways, loading docks, pedestrian walks; courts, stairs, ramps, and sidewalks; common corridors, rooms and restrooms; air-conditioning, fan, janitorial, electrical, and telephone rooms or closets; and all other areas within the Clearwater Building which are not specified for exclusive use or occupancy by Landlord or any tenant (whether or not they are leased or occupied). The designation of common area in the plat of or declaration of the

City Center Plaza Condominium shall be dispositive of the definition of Common Areas under this Lease.

19.2 License to Use Common Areas. The Common Areas shall be available for the common use of all Occupants and shall be used and occupied under the provisions of the Condominium Declaration.

XX. MISCELLANEOUS PROVISIONS

20.1 No Partnership. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, or of partnership, or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rent nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

20.2 Force Majeure. Landlord shall be excused for the period of any delay in the performance of any obligations hereunder when prevented from so doing by cause or causes beyond Landlord's control, including, without limitation, labor disputes, civil commotion, war, governmental regulations or controls, fire or other casualty, inability to obtain any material or service, or acts of God, or the acts or omissions of Tenant or the Tenant Related Parties.

20.3 No Waiver. Failure of Landlord to insist upon the strict performance of any provision or to exercise any option hereunder shall not be deemed a waiver of such breach. No provision of this Lease shall be deemed to have been waived unless such waiver be in writing signed by Landlord.

20.4 Notice. Any notice, demand, request, or other instrument which may be or is required to be given under this Lease shall be delivered in person or sent by United States certified or registered mail, postage prepaid and shall be addressed to the address set forth in the Lease Summary. Either party may designate such other address as shall be given by written notice.

20.5 Captions; Attachments; Defined Terms:

(a) The captions to the Section of this Lease are for convenience of reference only and shall not be deemed relevant in resolving questions of construction or interpretation under this Lease.

(b) Exhibits referred to in this Lease, and any addendums and schedules attached to this Lease shall be deemed to be incorporated in this Lease as though part thereof.

20.6 Recording. Tenant may not record this Lease or a memorandum thereof without the written consent of Landlord, which consent shall not be unreasonably withheld. Landlord, at its option and at any time, may file this Lease for record with the Recorder of the County in which the Clearwater Building is located.

20.7 Partial Invalidity. If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be invalid, the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby and each provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

20.8 Broker's Commissions. Tenant represents and warrants that there are no claims for brokerage commissions or finder's fees in connection with this Lease and agrees to indemnify Landlord against and hold it harmless from all liabilities arising from such claims, including any attorneys' fees connected therewith.

20.9 Tenant Defined; Use of Pronouns. The word "Tenant" shall be deemed and taken to mean each and every person or party executing this document as a Tenant herein. If there is more than one person or organization set forth on the signature line as Tenant, their liability hereunder shall be joint and several. If there is more than one Tenant, any notice required or permitted by the terms of this Lease may be given by or to any one thereof, and shall have the same force and effect as if given by or to all thereof. The use of the neuter singular pronoun to refer to Landlord or Tenant shall be deemed a proper reference even though Landlord or Tenant may be an individual, a partnership, a corporation, or a group of two or more individuals or corporations. The necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where there is more than one Landlord or Tenant and to corporations, associations, partnerships, or individuals, males or females, shall in all instances be assumed as though in each case fully expressed.

20.10 Provisions Binding, Etc. Except as otherwise expressly set forth herein including, specifically and without limitation, Section 9, all provisions herein shall be binding upon and shall inure to the benefit of the parties, their legal representative, heirs, successors, and assigns. Each provision to be performed by Tenant shall be construed to be both a covenant and a condition, and if there shall be more than one Tenant, they shall all be bound, jointly and severally, by such provisions. In the event of any sale or assignment (except for purposes of security or collateral) by Landlord of the Clearwater Building, the Leased Premises, or this Lease, Landlord shall, from and after the Commencement Date (irrespective of when such sale or assignment occurs), be entirely relieved of all of its obligations hereunder. Nothing set forth herein shall require Landlord to obtain Tenant's consent to any assignment, transfer or other encumbrance of any of Landlord's interest in the Property, the Leased Premises, the Improvements or the Common Areas.

20.11 Entire Agreement, Etc. This Lease and the Exhibits, Riders, and/or Addenda, if any, attached hereto, constitute the entire agreement between the parties. Any

guaranty attached hereto is an integral part of this Lease and constitutes consideration given to Landlord to enter in this Lease. Any prior conversations or writings are merged herein and extinguished. No subsequent amendment to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed. Submission of this Lease for examination does not constitute an option for the Leased Premises and becomes effective as a lease only upon execution and delivery thereof by Landlord to Tenant. If any provision contained in the rider or addenda is inconsistent with a provision in the body of this Lease, the provision contained in said rider or addenda shall control. It is hereby agreed that this Lease contains no restrictive covenants or exclusives in favor of Tenant. The captions and Section numbers appearing herein are inserted only as a matter of convenience and are not intended to define, limit, construe, or describe the scope or intent of any Section or paragraph.

20.12 Governing Law. The interpretation of this Lease shall be governed by the laws of the State of [State]. Tenant hereby expressly and irrevocably agrees that Landlord may bring any action or claim to enforce the provisions of this Lease in the State of [State], County of [County], and Tenant irrevocably consents to personal jurisdiction in the State of [State] for the purposes of any such action or claim. Tenant further irrevocably consents to service of process in accordance with the provisions of the laws of the State of [State]. Nothing herein shall be deemed to preclude or prevent Landlord from bringing any action or claim to enforce the provisions of this Lease in any other appropriate place or forum.

20.13 Recourse by Tenant. Anything in this Lease to the contrary notwithstanding, Tenant agrees that it shall look solely to the estate and property of Landlord in the land, Clearwater Buildings and Improvements thereto, and subject to prior rights of any mortgagee, for the collection of any judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default or breach by Landlord with respect to any of the terms, covenants, and conditions of this Lease to be observed and/or performed by Landlord, and no other assets of Landlord or any of its partners, shareholders, successors, or assigns shall be subject to levy, execution, or other procedures for the satisfaction of Tenant's remedies.

20.14 Rules and Regulations. Tenant and the Tenants Related Parties shall faithfully observe and comply with all of the rules and regulations applicable to the Leased Premises as set forth in Exhibit "E" as well as any other rules and regulations that are adopted in conformance with and pursuant to the Declaration. On any breach of any of such rules and regulations, (i) the Landlord may exercise any or all of the remedies provided in this Lease on a default by Tenant under this Lease and may, in addition, exercise any remedies available at law or in equity including the right to enjoin any breach of such rules and regulations, and (ii) the Association may exercise any or all of the remedies available under the Declaration. Landlord shall not be responsible to Tenant for the failure of any other tenant or person to observe any such rules and regulations.

20.15 Tenant's Representations and Warranties. Tenant represents and warrants to Landlord as follows:

(a) Tenant is duly organized and validly existing under the laws of the state of Idaho and has full power and authority to enter into this Lease, without the consent, joinder or approval of any other person or entity, including, without limitation, any mortgagee(s). This Lease has been validly executed and delivered by Tenant and constitutes the legal, valid and binding obligations of Tenant, enforceable against Tenant in accordance with its terms.

(b) Tenant is not a party to any agreement or litigation which could adversely affect the ability of Tenant to perform its obligations under this Lease or which would constitute a default on the part of Tenant under this Lease, or otherwise materially adversely affect Landlord's rights or entitlements under this Lease.

20.15 No Construction Against Preparer. This Lease has been prepared by Landlord and its professional advisors and reviewed by Tenant and its professional advisors. Landlord, Tenant and their separate advisors believe that this Lease is the product of their joint efforts, that it expresses their agreement, and that it should not be interpreted in favor of either Landlord or Tenant or against either Landlord or Tenant merely because of their efforts in its preparation.

20.16 Number and Gender. The terms "Landlord" and "Tenant," wherever used herein, shall be applicable to one or more persons or entities, as the case may be, and the singular shall include the plural and the neuter shall include the masculine and feminine and, if there be more than one person or entity with respect to either party, the obligations hereof of such party shall be joint and several.

20.17 Counterparts. This Lease may be executed and delivered in counterparts for the convenience of the parties, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same agreement.

20.18 Waiver of Trial by Jury. Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either against the other, upon any matters whatsoever arising out of or in any way connected with this Lease, Tenant's use or occupancy of the Leased Premises, and/or any claim of injury or damage.

20.19 Merger. If both Landlord's and Tenant's estates in the Leased Premises have both become vested in the same owner, this Lease shall nevertheless not be terminated by application of a doctrine of merger unless agreed in writing by Landlord, Tenant and any holder of a Mortgage.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease on the date first set forth above.

LANDLORD: CITY CENTER PLAZA MEETING, LLC,
a Utah limited liability company, by its
Manager

KC Gardner Company, L.C., a Utah
limited liability company

By: _____
Name: _____
Title: Manager

TENANT: GREATER BOISE AUDITORIUM
DISTRICT, a governmental subdivision of
the State of Idaho and a body corporate with
all the powers of a public or quasi-public
corporation

By: _____

Jim Walker

Its: Chairman

EXHIBIT "A"

DESCRIPTION OF PROPERTY

The Project occupies one or more units within one or more commercial condominiums to be constructed on a portion of the following described property:

Beginning a point which is 20.00 feet S.54°47'55"E. and 40.00 feet S.35°13'45"W. from the monument at West Main Street and North Eighth Street of BOISE CITY ORIGINAL TOWNSITE (said monument being 3092.04 feet N.60°31'39"W. from the East ¼ corner of Section 10, Township 3 North, Range 2 East, Boise Meridian); and running thence S.54°47'55"E. 126.94 feet; thence S.35°11'57"W. 180.23 feet; thence S.54°46'29"E. 23.43 feet; thence S.35°15'06"W. 42.33 feet; thence S.54°44'54"E. 82.73 feet; thence N.35°15'06"E. 11.50 feet; thence S.54°44'54"E. 16.67 feet; thence N.35°15'06"E. 12.83 feet; thence S.54°44'54"E. 29.00 feet; thence S.35°15'06"W. 23.67 feet; thence N.54°44'54"W. 28.17 feet; thence S.35°15'06"W. 46.60 feet; thence S.54°46'00"E. 69.40 feet; thence S.35°13'13"W. 17.44 feet; thence N.54°44'54"W. 159.23 feet; thence S.35°36'42"W. 14.41 feet; thence N.54°47'21"W. 80.73 feet; thence N.35°13'45"E. 10.25 feet; thence northerly 136.79 feet along the arc of a 100.00 feet radius non-tangent curve to the left, (chord bears N.04°02'51"W. 126.37 feet); thence N.35°13'45"E. 192.22 feet to the point of beginning.

The above described part of an entire tract contains 42865 square feet in area or 0.984 acres.

EXHIBIT "B"

DESCRIPTION OF LEASED PREMISES

The Fourth Floor of the Clearwater Building, consisting of 22,537 square feet of floor space as shown and depicted in the plans and specifications (the "Plans"), a reduced copy of which is attached hereto as Schedule 1 to this Exhibit "B" and incorporated herein by this reference. The Leased Premises does not include "Common Area" defined and depicted in the Plans. A floor plate depiction of the Leased Premises on the fourth floor of the Clearwater Building is attached hereto as Schedule 2 to Exhibit "B."

EXHIBIT "C"

Ultimate Plans and Specifications for Leased Premises

EXHIBIT "D"

ACKNOWLEDGMENT OF COMMENCEMENT DATE
AND TENANT ESTOPPEL CERTIFICATE

TO:

DATE:

RE: _____

Gentlemen:

The undersigned, as Tenant, has been advised that the Lease has been or will be assigned to you as a result of your financing of the above-referenced property, and as an inducement therefor hereby confirms the following:

1. That it has accepted possession and is in full occupancy of the Leased Premises, that the Lease is in full force and effect, that Tenant has received no notice of any default of any of its obligations under the Lease, and that the Lease Commencement Date is _____.
2. That the improvements and space required to be furnished according to the Lease have been completed and paid for in all respects, and that to the best of its knowledge, Landlord has fulfilled all of its duties under the terms, covenants and obligations of the Lease and is not currently in default thereunder.
3. That the Lease has not been modified, altered, or amended, and represents the entire agreement of the parties, except as follows:

4. That there are no offsets, counterclaims or credits against rentals, nor have rentals been prepaid or forgiven, except as provided by the terms of the Lease.

5. That said rental payments commenced or will commence to accrue on _____, and the Lease term expires _____.
The amount of the security deposit and all other deposits paid to Landlord is \$_____.
6. That Tenant has no actual notice of a prior assignment, hypothecation or pledge of rents of the Lease, except: _____
_____.
7. That this letter shall inure to your benefit and to the benefit of your successors and assigns, and shall be binding upon Tenant and Tenant's heirs, personal representatives, successors and assigns. This letter shall not be deemed to alter or modify any of the terms, covenants or obligations of the Lease.

The above statements are made with the understanding that you will rely on them in connection with the purchase of the above-referenced property.

Very truly yours,

Date of Signature: _____ By: _____

Exhibit "E"

RULES AND REGULATIONS

The rules and regulations set forth in this Exhibit are a part of the foregoing Lease. Whenever the term "Tenant" is used in these rules and regulations, such term shall be deemed to include Tenant and the Tenant Related Parties. The following rules and regulations may from time to time be modified by Landlord in the manner set forth in the Lease. These rules are in addition to those set forth in any restrictions of record and Tenant shall be subject to all such rules and regulations set forth in such restrictions of record. The terms capitalized in this Exhibit shall have the same meaning as set forth in the Lease.

1. Tenant shall not place or suffer to be placed on any exterior door, wall or window of the Leased Premises, on any part of the inside of the Leased Premises which is visible from outside of the Leased Premises or elsewhere on the Property, any sign, decoration, lettering, attachment, advertising matter or other thing of any kind, without first obtaining Landlord's written approval. Landlord may establish rules and regulations governing the size, type and design of all such items and Tenant shall abide by such rules and regulations. All approved signs or letterings on doors shall be printed, painted and affixed at the sole cost of Tenant by a person approved by Landlord, and shall comply with the requirements of the governmental authorities having jurisdiction over the Property. At Tenant's sole cost, Tenant shall maintain all permitted signs and shall, on the expiration of the Term or sooner termination of this Lease, remove all such permitted signs and repair any damage caused by such removal. Landlord may establish rules and regulations governing the size, type and design of all such items and Tenant shall abide by such rules and regulations, as well as the existing rules and regulations set forth in the Master Declaration.

2. Tenant shall have the right to non-exclusive use in common with Landlord, other tenants and their occupants of the parking areas, driveways, sidewalks and access points of the Property, subject to reasonable rules and regulations prescribed from time to time by Landlord. Landlord shall have the right, but not the obligation, to designate parking areas for Tenant.

3. Tenant shall not obstruct the sidewalks or use the sidewalks in any way other than as a means of pedestrian passage to and from the offices of Tenant. Tenant shall not obstruct the driveways, parking areas or access to and from the Property or individual tenant parking spaces. Any vehicle so obstructing and belonging to Tenant may be towed by Landlord, at Tenant's sole cost and expense.

4. Tenant shall not bring into, or store, test or use any materials in, the Clearwater Building which could cause fire or an explosion, fumes, vapor or odor unless explicitly authorized by the terms of the Lease.

5. Tenant shall not do, or permit anything to be done in or about the Leased Premises, or keep or bring anything into the Leased Premises, which will in any way increase the rate of

insurance cost for the Property. Unless explicitly provided for in the Lease, Tenant shall not bring, use, store, generate, dispose or allow combustible, flammable or hazardous materials on the Property or the Leased Premises.

6. Tenant shall immediately pay for any damage caused during moving of Tenant's property in or out of the Leased Premises.

7. No repair or maintenance of vehicles, either corporate or private, shall be performed on or about the Property.

8. Tenant shall not leave vehicles parked overnight on the Property unless (a) explicitly authorized by the terms of the Lease, or (b) such vehicles are being used by persons working overnight in the Leased Premises.

9. No outside storage of company or personal property, vehicles or boats in or about the Leased Premises is permitted. This includes, without limitation, transportation and storage items such as automobiles, trucks, trailers, boats, pallets, debris, trash or litter.

10. No additional lock or locks shall be placed by Tenant on any door in the Clearwater Building, without prior written consent of Landlord. Tenant shall not change any locks. All keys to doors shall be returned to Landlord at the termination of the tenancy, and in the event of loss of keys furnished, Tenant shall pay Landlord the cost of replacement.

11. The Leased Premises shall not be used for lodging or sleeping purposes. No immoral or unlawful purpose is allowed on the Property or in or about the Leased Premises. Vending machines for the use of Tenant's employees only are permitted. Electronic games and similar devices are prohibited.

12. Landlord shall have the right to control and operate the common areas of the Property, as well as the facilities and areas furnished for the common use of the tenants in such manner as Landlord deems best for the benefit of the tenants and the Property generally, considered as a first class institutional facility.

13. No animals or birds of any kind shall be brought into or kept in or about the Leased Premises, except for guide dogs for vision or hearing impaired persons.

14. Canvassing, soliciting, distribution of handbills or any other written materials or peddling on or about the Property are prohibited, and Tenant shall cooperate to prevent the same.

15. Tenant shall not throw any substance, debris, litter or trash of any kind out of the windows or doors of the Clearwater Building, and will use only designated areas for proper disposal of these materials.

16. Waterclosets and urinals shall not used for any purpose other than those for which they are constructed, and no sweepings, rubbish, ashes, newspaper, coffee grounds or any other

substances of any kind shall be thrown into them.

17. Waste and excessive or unusual use of water is prohibited without the prior written consent of Landlord.

18. Tenant shall not penetrate the walls or roof of the Clearwater Building and shall not attach any equipment or antenna to the roof or exterior of the Clearwater Building without Landlord's prior written consent. Tenant shall not step onto the roof of the Clearwater Building for any reason. No television, radio or other audiovisual medium shall be played in such manner as to cause a nuisance to other tenants or persons using the common areas.

19. Landlord shall not be responsible for lost, stolen or damaged personal property, equipment, money, merchandise or any article from the Leased Premises or the common areas regardless of whether or not the theft, loss or damage occurs when the Leased Premises are locked.

20. Landlord reserves the right to expel from the Property anyone who in Landlord's reasonable judgment is intoxicated or under the influence of alcohol, drugs or other substance, or who is in violation of the rules and regulations of the Property.

21. Landlord shall have the right, exercisable without notice and without liability to Tenant, to change the name or street address of the Clearwater Building or the Property.

22. These rules and regulations are in addition to, and shall not be construed to in any way modify, alter or amend, in whole or in part, the terms, covenants, agreements and conditions of the Lease.

23. Landlord may, from time to time, waive any one or more of these rules and regulations for the benefit of any particular tenant or tenants, but no such waiver by Landlord shall be construed as a waiver of such rules and regulations in favor of any other tenant or tenants, nor prevent Landlord from thereafter enforcing them against any or all of the tenants of the Property.

24. The use of the Leased Premises for business activities is to be conducted within the interior of Tenant's space to the greatest extent possible. Extensive business activities outside Tenant's space is not permitted without the prior written consent of Landlord.

25. If a Tenant is in violation of these rules and regulations and has not corrected such violation within ten (10) days after written notice Landlord may, without forfeiting any other rights or recourses permitted under the Lease, correct the violation at Tenant's expense to include levying a \$100.00 administrative charge per violation for coordinating and managing the correction of the violation. Costs associated with Landlord's reasonable actions to correct the violation including the administrative charge will be considered additional rent as defined in the Lease.

Exhibit 4

EXHIBIT “E-2” – OPTION TO PURCHASE MEETING SPACE

OPTION AGREEMENT

THIS OPTION AGREEMENT (this "Option"), is executed as of _____, 201__ (the "Effective Date"), by and between City Center Plaza Meeting, LLC, an Idaho limited liability company ("Seller"), and Greater Boise Auditorium District, a governmental subdivision of the State of Idaho and a body corporate with all the powers of a public or quasi-municipal corporation ("Buyer").

1. Prior Agreements. Buyer and Seller have previously entered into a Master Development Agreement ("Development Agreement") incorporated herein by this reference, to facilitate Seller's development of certain improvements, including two buildings containing ballroom space, commercial kitchen, meeting space, and a variety of service areas ("Improvements"). Terms defined in the Development Agreement shall have the same meaning herein. The ballroom space, the commercial kitchen and their associated service areas are condominium units and common areas within the building known as the "Centre Building." The meeting space and its associated service areas (the "Meeting Room Facilities") are condominium units and common area within the building known as the "Clearwater Building." Buyer and seller have also agreed, in the Development Agreement, to enter into a lease agreement whereby Seller leases the Meeting Room Facilities to Buyer ("Meeting Space Lease"). In connection with and consideration of Buyer entering into the Meeting Space Lease with Seller for the Meeting Room Facilities on the Property, dated as of the Effective Date, Seller hereby grants and gives to Buyer, an exclusive option ("Option") to purchase all of Seller's interest in the Meeting Room Facilities as such are described in the Development Agreement and further described on Exhibit "A" attached hereto, pursuant to the terms and conditions hereinafter set forth.

2. Option Rights; Exercise. Buyer shall have the option to purchase the Meeting Room Facilities at the following times and dates, provided that (i) there are no uncured defaults existing under the Lease at the time of exercise by Buyer and (ii) Buyer gives proper timely exercise notice to Seller as hereinafter provided.

- a. Initial Option Period. Buyer shall have the option to purchase the Meeting Room Facilities from and after the date Seller substantially completes construction of the Clearwater Building and the Meeting Room Facilities and Seller provides to Buyer a Certificate of Occupancy for the Meeting Room Facilities. Seller shall provide such certificate as soon as it is reasonably available. This Option shall continue for a period of one (1) year from the date this Certificate of Occupancy is provided to Buyer by Seller (the "Initial Option Period").
- b. Subsequent Option Periods. If Buyer does not exercise the Option to purchase the Meeting Room Facilities during the Initial Option Period, then Buyer shall have the further subsequent option to purchase the Meeting Room Facilities on (i) the third anniversary of the Commencement Date of the Lease and for sixty (60) days subsequent commencing, and (ii) on each subsequent second anniversary thereafter

for the duration of the term of the Lease (fifth anniversary, seventh anniversary, ninth anniversary etc.).

- c. Exercise. Buyer may only exercise the Option by providing written notice of intent to exercise to Seller within the option period, together with a good faith deposit in the form of Buyer's check payable to Seller equal to Ten Thousand Dollars (\$10,000.00), applicable to the purchase price but non-refundable.
- d. Purchase Price. The Purchase Price during the Initial Option Period shall be equal to the Cost of Construction, as defined in the Lease. The Purchase Price during any subsequent option period, if any comes into being, shall be the Purchase Price plus a sum equal to the Cost of Construction increased by two percent (2%) per annum, compounded, applied annually from the expiration of the Initial Option Period. Additionally, if Buyer exercises the option to acquire the Meeting Room Facilities during any option period subsequent to the Initial Option Period, then in such event Buyer shall also be liable for and shall reimburse to Seller any and all prepayment fees or charges Seller may be liable for to its permanent lender for early payoff and partial release from Seller's permanent financing on the Clearwater Building.

3. Payment of Purchase Price. The purchase price for the Meeting Room Facilities shall be payable by wire transfer of immediately available federal funds on or before the Closing Date (as defined in Section 6 hereof).

4. Buyer's Conditions. Notwithstanding the exercise of this Option by written notice from Buyer to Seller, Buyer shall not be obligated to proceed to Closing until each of the following conditions are satisfied:

- a. Condition of Title. Title to the Meeting Room Facilities shall be conveyed by a Special Warranty Deed, in the form attached hereto and incorporated herein as **Exhibit "B"**; free and clear of all liens, encumbrances, easements, assessments, restrictions, or other exceptions to title caused or suffered by Seller or anyone claiming by or through Seller (the "**Encumbrances**") except for (i) the exceptions set forth in **Exhibit "C"** attached hereto; or (ii) any Encumbrance created pursuant to the requirements of the Development Agreement ("**Permitted Exceptions**"). Upon exercise by Buyer of the Option, Buyer shall obtain or cause Escrow Holder to obtain a commitment for title insurance ("**Title Commitment**") with instructions that the original Title Commitment and exception documents be delivered to Buyer with copy to Seller. Buyer shall have ten (10) days after receipt of the Title Commitment, to review the condition of title set forth in the Title Commitment and to deliver notice to Seller in writing of any objections Buyer may have, with reasons specified, of anything contained in the Title Commitment that is not a Permitted Exception as set forth above. In the event of an objection by Buyer,

Closing shall be continued until such date as Buyer and Seller can resolve and eliminate any item that is not a Permitted Exception as set forth above. Seller shall cause (at Seller's sole cost and expense) any exception objected to by Buyer, which is not a Permitted Exception and that is either a monetary lien or that would constitute a material impairment to Buyer's title or use and enjoyment of the Centre Facilities, to be timely eliminated and removed.

- b. Title Insurance. Escrow Holder shall be prepared to obtain, issue and deliver to Buyer, upon closing, a standard owner's policy of title insurance, in the full amount of the Purchase Price, insuring fee simple title to the Centre Facilities to be vested in Buyer, subject only to Permitted Exceptions.

5. Seller's Conditions. Notwithstanding the execution of this Option, Seller may terminate this Option without liability unless the following condition has been satisfied or waived in writing by Seller prior to the Closing Date:

- a. Buyer Performance of Obligations. Buyer is not in default under the terms of the Development Agreement, or any instrument or obligation related thereto.
- b. Deposit. Buyer has, on the business day immediately preceding the Closing Date, deposited the Purchase Price into Escrow.

6. Closing. Within two (2) days from the date of the exercise of the Option by Buyer, Buyer shall open escrow with First American Title Insurance Company, attention Kim Yelm, 800 W. Main Street, Suite 910, Boise, Idaho 83702 ("**Escrow Holder**"). Closing shall occur thirty (30) days from the date Buyer delivers the written Notice of Exercise of Option to Seller ("**Closing Date**"), upon the delivery of the Purchase Price to Seller and the delivery of the required documents to Buyer. On or before the Closing Date, Seller shall deposit with Escrow Holder a duly executed and acknowledged Special Warranty Deed conveying the Meeting Room Facilities to Buyer with instructions to deliver the Special Warranty Deed to Buyer when Escrow Holder is in a position to disburse to Seller the entire Purchase Price. On or before the Closing Date, Buyer shall deposit with Escrow Holder the Purchase Price with instructions to disburse the entire Purchase Price to Seller upon delivery of the Special Warranty Deed. If the Closing Date, determined in accordance with the foregoing, is a Saturday, Sunday or legal holiday, then the Closing Date shall be the next succeeding day that is not a Saturday, Sunday or legal holiday.

7. Costs and Expenses. Upon Closing, Buyer shall pay the Escrow (Closing) Fee and any other costs or charges assessed by Escrow Holder related to the Closing, and shall pay the title insurance premium for the Owner's Policy. Seller shall pay any and all costs for the release of any monetary lien encumbering the Meeting Room Facilities, and any accrued real property taxes. Notwithstanding the foregoing, if the Option is not exercised during the Initial Option Period, then Buyer shall pay any pre-payment penalty or similar costs imposed by Seller's permanent lender. All other utility expense and/or assessment shall be prorated through the date of Closing.

8. **Attorneys' Fees.** If a suit, action or other proceeding (including, without limitation, any arbitration, mediation, or alternative dispute resolution proceeding) arising out of or related to this Option is instituted by any party to this Option, the prevailing party shall be entitled to recover its reasonable attorneys' fees, expert witness fees, and costs (i) incurred in any settlement negotiations, (ii) incurred in preparing for, prosecuting, or defending any suit, action, or other proceeding, including, but not limited to, any arbitration, mediation or alternative dispute resolution proceeding, and (iii) incurred in preparing for, prosecuting or defending any appeal or any suit, action, or other proceeding. For purposes of this section, "attorneys' fees" shall mean and include attorneys' fees and any paralegal fees. This section shall survive and remain enforceable notwithstanding any rescission of this Option or any determination by a court of competent jurisdiction that all or any portion of the remainder of this Option is void, illegal, or against public policy.

9. **Default.** Time is of the essence of this Option. Upon the failure of either party to perform their obligations hereunder, such party shall be deemed to be in default only after receiving written notice failing to cure the deficient performance within ten (10) days. Upon a default occurring, the nondefaulting party may at its election:

- a. Terminate this Option; or
- b. If the defaulting party is Seller, Buyer may seek specific performance of this Contract, or, alternatively, if in Buyer's reasonable judgment specific performance is not a practical remedy, then Buyer may seek and recover monetary damages, including exemplary damages.
- c. If the defaulting party is Buyer, Seller may seek specific performance of this Option, or, alternatively, if in Seller's reasonable judgment specific performance is not a practical remedy, then Seller may seek and recover monetary damages, including exemplary damages for the cost of retrofitting the Meeting Room Facilities to an alternative economic use. Buyer acknowledges that the Meeting Room Facilities are a unique element of the project and that they are being constructed solely for the use and occupancy of Buyer. Buyer further acknowledges that the Seller would have significant injury if Buyer were to default and that Seller would incur significant extraordinary expense to make the Meeting Room Facilities useable for another purpose.

The parties declare it to be their intent that the Option may be specifically enforced.

10. **Notices.** Any notice, demand, request, invoice, bill or other instrument that may be or is required to be given under this Contract shall be delivered in person, via nationally recognized overnight courier, or sent by United States certified or registered mail, postage prepaid, to as set forth herein as applicable. Notices shall be in writing unless oral notice is expressly permitted by this Lease and shall be deemed given on the date immediately following deposit with the overnight courier or upon actual receipt, if earlier. A party may change its notice address as set forth herein by delivering notice thereof to the other party. Notices shall be delivered as follows:

SELLER:

City Center Plaza Meeting, LLC
Attention: Christian Gardner
90 South 400 West, Suite 360
Salt Lake City, UT 84101

BUYER:

Greater Boise Auditorium District
PO Box 1400
Boise, ID 83701

with a copy to:

KC Gardner Company, L.C.
Attention: General Counsel
101 S. Capitol Boulevard, Suite 1200
Boise, ID 83702

Donald E. Knickrehm
Givens Pursley
601 W. Bannock Street
Boise, ID 83702

11. **Commission.** Buyer and Seller agree that neither has been represented by any broker, finder or other party entitled to a real estate brokerage commission, finder's fee or other compensation. Each Party agrees to indemnify, defend and hold the other Party harmless from and against any commissions, fees or other compensation which is claimed by any third Party with whom the indemnifying Party has allegedly dealt.

12. **Lease Termination.** The parties acknowledge they have entered into a Lease Agreement of even date and simultaneous with execution of this Option. Upon exercise of this Option and Closing as herein provided, said Lease shall automatically terminate, and be of no further force and effect.

13. **General.**

- a. **Successors.** This Contract shall be binding upon the heirs, successors, assigns and personal representatives of the parties hereto.
- b. **Headings.** Section headings are for convenience only and shall not be deemed to not define, limit or construe the contents of any terms, consents or conditions in this Contract.
- c. **Entire Agreement.** This Contract, together with the exhibits attached hereto, contains the entire agreement between the parties hereto and supersedes all prior understandings and agreements, oral or written, with respect to the subject matter hereof. The provisions of this Contract shall be construed as a whole and not strictly for or against any party, and may not be modified or amended in any manner except by an instrument in writing signed by both Buyer and Seller.
- d. **Governing Law.** This Option shall be governed by and construed in accordance with the laws of the state in which the Subject Property is located.

- e. Joint and Several Obligations. In the event any party hereto is composed of more than one (1) person, the obligations of such party shall be joint and several.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

SELLER: CITY CENTER PLAZA MEETING, LLC, a Utah limited liability company, by its Manager

KC Gardner Company, L.C., a Utah limited liability company

By: 

Name: Chastra Gardner

Title: Manager

BUYER: GREATER BOISE AUDITORIUM DISTRICT, a governmental subdivision of the State of Idaho and a body corporate with all the powers of a public or quasi-public corporation

By: _____

Jim Walker

Its: Chairman

By: _____

Pat Rice

Executive Director

EXHIBIT A
TO
OPTION AGREEMENT

Description of Meeting Room Facilities

The Fourth Floor of the Clearwater Building, consisting of 22,537 square feet of floor space, as described in the Development Agreement and exhibits thereto, incorporated herein by this reference.

EXHIBIT B
TO
OPTION AGREEMENT

Form of Special Warranty Deed

EXHIBIT C
TO
OPTION AGREEMENT

Permitted Exceptions

ORIGINAL

NO. _____
A.M. _____ P.M. 5

FEB 18 2015

CHRISTOPHER D. RICH, Clerk
By KATRINA HOLDEN
DEPUTY

JOHN L. RUNFT (ISB # 1059)
 JON M. STEELE (ISB # 1911)
 RUNFT & STEELE LAW OFFICES, PLLC
 1020 W. Main Street, Suite 400
 Boise, Idaho 83702
 Phone: (208) 333-8506
 Fax: (208) 343-3246
 Email: JRunft@runftsteele.com

Attorneys for David Frazier

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF:)
	) Case No. CV OT 1423695
GREATER BOISE AUDITORIUM)
DISTRICT,	) ERRATA MEMORANDUM TO
	) RESPONDENT'S BRIEF
Petitioner.)
)
)

Counsel for Petitioner, John L. Runft, hereby gives notice of the following inadvertent clerical errors appearing in *Respondent's Brief in Opposition to Memorandum in Support of Petition for Judicial Confirmation*, filed February 13, 2015.

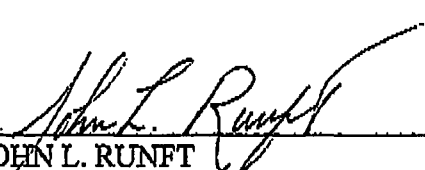
- (1) Page 3: In the fifth line under JURISDICTION AND STANDING, the word "is" should be deleted.
- (2) Page 6: In the third line of the first full paragraph, the word "no" following the word "but" should be read as being the word "not."
- (3) Page 12: In the second line of the second full paragraph, the word "be" should be inserted between the words "to" and "ultimately."

- (4) Page 13: In the second line of the last paragraph, the word "has" following "maybe" should be the word "have."

DATED this 18th day of February, 2015.

RUNFT & STEELE LAW OFFICES, PLLC

By: _____


JOHN L. RUNFT

Attorney for Respondent David Frazier

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 18th day of February 2015, a true and correct copy of the foregoing **ERRATA TO RESPONDENT'S BRIEF IN OPPOSITION TO MEMORANDUM IN SUPPORT OF PETITION FOR JUDICIAL CONFIRMATION**, was served upon opposing counsel as follows:

Donald E. Knickrehm
Givens Pursley LLP
601 E. Bannock St.
Boise, ID 83702
F: (208) 388-1300

☐ US Mail
☐ Personal Delivery
☐ Facsimile
☒ Email

Nicholas G. Miller
S.C. Danielle Quade
Hawley Troxell Ennis & Hawley LLP
877 W. Main St., Suite 1000
Boise, ID 83702-5883
F: (208) 954-5285

☐ US Mail
☐ Personal Delivery
☐ Facsimile
☒ Email

RUNFT & STEELE LAW OFFICES, PLLC

By: _____


JOHN L. RUNFT

Attorney for Respondent David Frazier

Norton
Sanine
re
2-20-15

Donald E. Knickrehm, ISB No. 1288
GIVENS PURSLEY LLP
601 W. Bannock Street
Boise, ID 83702
Telephone: (208) 388-1200
Facsimile: (208) 388-1300

Nicholas G. Miller, ISB No. 3041
S.C. Danielle Quade, ISB No. 6363
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 W. Main Street, Suite 1000
Boise, ID 83702-5883
Telephone: (208) 344-6000
Facsimile: (208) 954-5285

Attorneys for Petitioner
Greater Boise Auditorium District

NO. _____
FILED _____
A.M. _____ P.M. 429

FEB 19 2015

CHRISTOPHER D. RICH, Clerk
By TENILLE RAD
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF:

GREATER BOISE AUDITORIUM
DISTRICT,

PETITIONER.

)
) Case No. CV-OT-2014-23695

)
) AFFIDAVIT OF PUBLISHING OF NOTICE
) OF FILING PETITION FOR JUDICIAL
) CONFIRMATION AND NOTICE OF
) HEARING THEREON

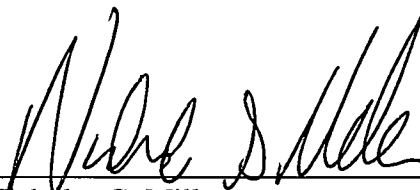
AFFIDAVIT OF PUBLISHING OF NOTICE OF FILING PETITION
FOR JUDICIAL CONFIRMATION AND NOTICE OF HEARING
THEREON - 1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of February, 2015, I caused to be served a true copy of the foregoing AFFIDAVIT OF PUBLISHING OF NOTICE OF FILING PETITION FOR JUDICIAL CONFIRMATION AND NOTICE OF HEARING THEREON by the method indicated below, and addressed to each of the following:

John L. Runft, Esq.
Runft & Steele Law Offices, PLLC
1020 W. Main St., Ste. 400
Boise, ID 83702

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ E-mail
☐ Telecopy



Nicholas G. Miller

Idaho Statesman

P.O. BOX 40, BOISE, ID 83707-0040

LEGAL PROOF OF PUBLICATION			
Account #	DTI#	Identification	Amount:
263959	1528014	DISPLAY NOTICE RETAIL LEGAL NOTICE	\$2,227.50
Attention:		P.O. #	Run Dates
SHONNA RUSSELL			FEBRUARY 2, 9, 16, 2015
HAWLEY TROXELL ENNIS & HAWLEY LLP PO BOX 1617 BOISE, ID 83701-1617		Number of Lines 3 X 9"	
		Affidavit	Legal #
		1	

JANICE HILDRETH, being duly sworn, deposes and says: That she is the Principal Clerk of *The Idaho Statesman*, a daily newspaper printed and published at Boise, Ada County, State of Idaho, and having a general circulation therein, and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto: that said notice was published in *The Idaho Statesman*, far forward in the Main Section as required by Idaho Code Section 7-1306:

THREE

☒ consecutive weekly ☐ single
☐ consecutive daily ☐ odd skip
insertion(s)

beginning issue of: FEBRUARY 2, 2015

ending issue of: FEBRUARY 16, 2015

Janice Hildreth

STATE OF IDAHO)

.ss

COUNTY OF ADA)

On this 19 day of FEBRUARY in the year of 2015
before me, a Notary Public, personally appeared before me
Janice Hildreth known or identified to me to be the person
whose name subscribed to the within instrument, and being
by me first duly sworn, declared that the statements therein
are true, and acknowledged to me that she executed the same.

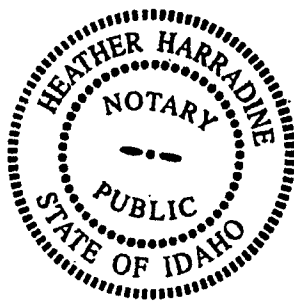
Heather Harradine

Notary Public for Idaho

Residing at: Boise, Idaho

My Commission expires:

2/11/2020



000515

LocalNews IdahoWest

FIND HEADLINES FROM ACROSS THE VALLEY IDAHOSTATESMAN.COM • SHARE YOUR PHOTOS AND VIDEO WITH US SHARE@IDAHOSTATESMAN.COM

EVENTS THIS WEEK

MONDAY

Reading at the Refuge: 10 a.m. to 3 p.m., Deer Flat National Refuge Visitor's Center, 13751 Upper Embankment Road, Nampa. Wildlife-themed story and other activities for preschoolers, kindergartners and parents. Free.

TUESDAY

New Boise police chief: Swearing-in ceremony for Police Chief Bill Bones, 3 p.m., Ada County Courthouse, main floor meeting room, 200 W. Front St., Downtown Boise.

Business Basics: 9 to 11 a.m., Small Business Administration District Office, 380 E. Parkcenter Blvd., Suite 330, Boise. A free workshop for small-business owners and those interested in opening businesses. Reserve your spot: 334-9004.

WEDNESDAY

Blindfold Series with Terry Rich at the Peabody Learning Center: 9 to 10 a.m., Jim Hall Peabody Learning Center, 3188 Sunset Peak Road, Boise. Rich will discuss the state of global bird populations. Free.

THURSDAY

Assistance League Open House: 6 to 8 p.m., 5825 N. Glenwood St., Garden City. This meet and greet will provide information to potential new members. 377-4327.

Composition Masterclass with Ben Model: 6:30 p.m., Morrison Center Recital Hall, Boise State University. Model has been a leading silent film composer/producer for 30 years. Primarily intended for composition students, the general public is welcome. Free.

FRIDAY

"In Translation: Maria-Marcia Marica": 5:30 to 7:30 p.m., Boise State Student Union Gallery, 1910 University Drive, Boise. Opening reception for this interdisciplinary exhibition. Free.

SATURDAY

STEM Exploration: 9 a.m. to 4 p.m., Engineering Complex, Boise State University. STEM Exploration is designed to inform, entertain and inspire children with dynamic activities and interaction with STEM students, faculty researchers and industry experts. The event is free and open to the public, with check-in at

the Engineering and Technology Building at 1375 University Drive. Wild at Heart at Zoo Boise: 10 a.m. to 5 p.m., Zoo Boise in Julia Davis Park. Zoo residents will receive special Valentine's Day-themed enrichment, and visitors can make cards for their favorite animals. Free admission.

AGENDAS THIS WEEK

BOISE

CITY COUNCIL
Meets at 6 p.m., Tuesday, City Hall, 150 Capitol Blvd., Council Chambers, third floor.

► Public hearing on a proposed master plan for the Central Addition neighborhood.
► Public hearing on an appeal of a Planning and Zoning approval of a permit for a gravel and concrete plant on 137 acres at 10988 W. Joplin Road.

PLANNING & ZONING

Meets at 6 p.m., Monday, City Hall, 150 Capitol Blvd., Council Chambers, third floor.
► Consideration of a permit for a child care facility for up to 21 children in an existing building at 5333 W. Franklin Road.

► Consideration of a subdivision with 23 buildable and three common lots on approximately three acres at 9545 W. Usick Road and 3050 N. Linda Vista Lane.

KUNA

CITY COUNCIL
Meets Tuesday at City Hall, 763 W. Avalon St.

6 p.m. Workshop
► Expenses and policy implementation discussion.

7 p.m. Regular meeting
► Quarterly financial update.

MERIDIAN

CITY COUNCIL
Meets 6 p.m., Tuesday at City Hall, 33 E. Broadway Ave.

► Approval to Grant to Parks and Recreation Commission.

ADA COUNTY COMMISSIONERS

Meet daily at the Ada County Courthouse, 200 W. Front St. For complete agendas, go to adacountyid.gov.

Monday
9 a.m. Open business meeting
► Public hearing on petition to create Avon community infra-

structure taxing district.

HIGHWAY DISTRICT

Meets noon Wednesday at ACHD, 3775 Adams St., Garden City.

► Budget amendments.
► Jacksons Food Stores appeal of staff decision to deny modifying Franklin Road access.

NAMPA

CITY COUNCIL

Meets at 6:30 p.m., Monday in Council Chambers, 411 3rd St. S.

► Downtown Nampa standards.

CALDWELL

CITY COUNCIL

Meets at 7 p.m., at Caldwell Police Station, 110 S. Fifth Ave.

► Zoning ordinance amendments.

CANYON COUNTY COMMISSIONERS

Meet daily at the Canyon County Courthouse, 1115 Albany St., Caldwell. For complete agendas, go to canyonco.org.

ROAD WORK THIS WEEK

INTERSTATE 84

► Restrictions at Gowen Road, Broadway Avenue and Meridian Road intersections through spring.

BOISE/GARDEN CITY
► Five Mile Road from south of Fairview Avenue to Franklin Road restricted through April 1.

► Franklin Road from west of El Blanco Drive to west of Five Mile Road restricted through April 1.

► Gowen Road between Elsenman Road and Federal Way restricted through spring.

► Main Street south side from 11th Street to Capitol Boulevard restricted through June 5.

EAGLE/KUNA/MERIDIAN
► Eagle and McMillan roads intersection restricted through July 31.

► Edgewood Lane from Hill Road to Laurelhurst Drive restricted through Feb. 27.

► Hill from Edgewood to Idaho 55 closed through July 3.

NAMPA

► Linden Road from Northside to Franklin Boulevard closed through Aug. 31.

► Madison and Usick roads intersection closed Feb. 9 through March 9.

Statesman staff

Crapo's collaborative reaps reward



Letters from the West

ROCKY BARKER
rbarker@idahostatesman.com

The debate over whether to protect the Boulder-White Clouds as a national monument or as a wilderness or to keep the existing wilderness study areas has dominated land discussions in Idaho.

But a group of conservationists, timber industry representatives, local officials, motorized recreationists and the Nez Perce Tribe have been working quietly for eight years on a wilderness bill for the Clearwater-Nez Perce National Forest. Just like Rep. Mike Simpson and his Central Idaho Economic Development and Recreation Act for the Boulder and White Clouds mountains, the Clearwater Basin Collaborative hasn't called what it's working on a wilderness bill.

In fact, at the website for the Clearwater Collaborative you will find the word "wilderness" only once in passing. That's because many of the most outspoken residents of Idaho and Clearwater counties revile wilderness areas, where logging, road-building and motorized recreation is prohibited.

For conservationists, the five-year project has meant removal of 66 miles of sediment-bleeding roads and rehabilitation of 63 miles of streams. The project has improved 16,000 acres of wildlife habitat.

Working under the guidance of Idaho Republican Sen. Mike Crapo, this collaborative has helped the U.S. Forest Service rebuild its ability to actively manage its resources, including selling timber.

One project sponsored by the collaborative in the Selway and Middle Fork of the Clearwater River watersheds has attracted \$16 million of federal and matching funding, created and maintained more than 650 direct and indirect jobs and generated \$19 million in payroll. It has led to the treatment of 61,000 acres of forest and the harvest of 40 million board feet.

It wasn't long ago when zero timber was sold on the Clearwater and Nez Perce Forests. This year, 60 million board feet of timber, enough to build 6,000 homes, will be sold from the

forest. Even conservationists believe that 100 million board feet can be cut from the roaded areas as part of a restoration program.

That seems pretty good — except when compared to the past. The Clearwater Forest alone cut more than twice that annually in the 1960s. For residents of towns such as Orofino and Kooskia, it's hard to accept that what happens again, especially as they watch fires burn large swaths of the backcountry.

The collaborative is possible because the parties aren't fighting over timber harvest in roadless lands. Fire is the agent of change on the backcountry, but would be intolerable in much of the front country.

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officials and environmentalists that created six new Idaho wilderness areas in the South Idaho desert.

Without a comprehensive bill like Crapo's, the commitment and funding necessary for the full-scale restoration that both sides want for the Clearwater is unlikely.

Local officials such as Idaho County Commissioner Skip Brandt are pushing reforms to the Forest Service's environmental-review process that will reduce the costs and barriers to the projects so they can generate more money for the region.

His goal is a "robust timber sale program that is consistent and sustainable."

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Attorneys for Petitioner
Greater Boise Audiotronics District

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF:

GREATER BOISE AUDIOTRONICS DISTRICT,
PETITIONER.

Case No. CV-07-2014-23695

NOTICE OF FILING PETITION FOR
JUDICIAL CONFIRMATION AND NOTICE OF
HEARING THEREON

NOTICE IS HEREBY GIVEN THAT Petitioner, Greater Boise Audiotronics District, a public body organized and operating as an audiotronics district pursuant to Idaho Code Title 67, Chapter 49 (hereinafter referred to as the "District"), has filed its Petition for Judicial Confirmation in the above matter (the "Petition") pursuant to the Idaho Judicial Confirmation Law, Idaho Code § 7-1301 et seq., requesting a judicial confirmation and determination of the power and authority of the District to enter into a Lease Agreement (Annual Appropriation) (the "Lease Agreement") to finance the acquisition of certain condominium units containing a new ballroom facility, related kitchen and ancillary facilities along with related soft costs and equipment (the "Financed Project"), to improve and expand its existing convention center and public event facilities in downtown Boise known as the "Boise Centre", based on the finding that the Lease Agreement is not an indebtedness or liability prohibited under Article VIII, § 3 of the Idaho Constitution. The initial term of the Lease Agreement will end at the conclusion of the District's fiscal year following commencement, and will be renewable for additional terms of one year only upon appropriation, budgeting and affirmative notice of the intent to renew the Lease Agreement by the District. The Petitioner estimates that the cost of the Financed Project will be approximately \$19,091,064, plus related soft costs and equipment, for a total Financed Project cost of approximately \$21,236,400, plus related reserves and financing costs.

The District has entered into an agreement with the Urban Renewal Agency of Boise City, Idaho, aka Capital City Development Corporation (the "Agency"), pursuant to which the Agency agrees to assist with the financing of the Financed Project. The District and the Agency have agreed that the District will assign, and the Agency will accept the assignment of, the District's right to purchase the Financed Project under the master development agreement between the District and the developer of the Financed Project. The Agency intends to issue a lease revenue note (the "Note") to finance its purchase of the Financed Project. Once purchased, the Agency will then lease the Financed Project to the District pursuant to the Lease Agreement. The Note will be repaid by the District's lease payments under the Lease Agreement. The District will pay lease payments under the Lease Agreement using a portion of the annual receipts from hotel/motel room sales tax levied and collected by the District pursuant to Idaho Code Section 67-4917B. Once the Note is paid in full, the Lease Agreement terminates and the Financed Project may be purchased by the District for a nominal amount.

The Lease Agreement is more particularly described in the Petition and Resolution of the District approving the Petition adopted on November 20, 2014 (the "Resolution"). Full and complete copies of the Petition, the Lease Agreement and the Resolution may be examined at the District's administrative offices located at 150 W. Front Street, Boise, Idaho.

NOTICE IS FURTHER GIVEN THAT a hearing on the Petition shall be held on February 25, 2015, at 3:00 p.m. in the District Court at the Ada County Courthouse, 200 W. Front Street, Boise, Idaho before the Honorable Lynn G. Norton.

WITNESS my hand and the seal of the Court this 20th day of January, 2015.

CLERK OF THE COURT
CHRISTOPHER D. RICH

By: THERESA RAD
Deputy Clerk

'Me and Earl and the Dying Girl' sweeps Sundance awards



CHUM HOOON CHUM / Sundance Institute via The Associated Press
R.J. Cyler, left, and Thomas Mann in a scene from "Me and Earl and the Dying Girl"

BY LINDESEY BARR
THE ASSOCIATED PRESS
PARK CITY, Utah — Sundance breakout "Me and Earl and the Dying Girl," a quirky, heartfelt story about a pair of high school film lovers who befriended a girl with cancer, won both the U.S. dramatic audience award and the grand jury prize at the 51st Sundance Film Festival awards, announced Saturday.

Thomas Mann, R.J. Cyler and Olivia Cooke lead the cast of the idiosyncratic tearjerker from director Alfonso Gomez-Rejon, who dedicated the audience award to all the filmmakers and artists in his hometown of Laredo, Texas. Nick Offerman, Connie Britton, and Molly Shannon also star.

"My love goes out to the entire cast and crew," Gomez-Rejon said. "This movie was about processing loss, but really to celebrate a beautiful life and a beautiful man, which is my amazing father — to celebrate his life through humor."

"The Wolfpack," Crystal Moselle's documentary about six movie-loving teenage boys isolated from

society, picked up the grand jury prize for best documentary.

"I stalked these kids on the street one day and here I am," Moselle said.

Comedian Tig Notaro, whose documentary "Tig" premiered at the festival, hosted the ceremony. She also told the audience that she used to volunteer at the festival in the mid-'90s.

The 31st Sundance Film Festival wrapped on Sunday.

SEE A LIST OF ALL THE WINNERS idahostatesman.com

STUDENT DATA

CONTINUED FROM A1

first job interview?

What about that invitation to the daughter of Priscilla Davenport got in the mail last summer?

"What came to my mind is how did they get her information? How did they even know to send her this letter?" said Davenport, whose daughter is a junior at McNair High School in DeKalb County, Ga.

A friend at the school got the same solicitation to join a national student organization. It was based on their academic performances, so Davenport suspects the information slipped from the school. If the group knew about grades, Davenport worried, what else did they know?

IT'S GOING TO GET OUT OF CONTROL

The DeKalb County School District's technology chief, Gary Brantley, said most of his system's student data has not been put on outside "cloud" computing networks yet. He said that is likely to change, though, as a generation of technology staffers retires and the district loses the expertise to operate its own computer servers. Also, teachers are signing up students for online programs that are not

vetted, he said. There are free offerings for everything from math tutoring to classroom monitoring.

Brantley said he plans to ask the school board to tighten the policy for teachers.

"If we don't stop it, it's going to get out of control," he said. "We really need tighter regulations around it."

Forsyth County north of Atlanta, has ventured further into educational technology, hiring a company to provide tailored curriculum on computing devices. Technology chief Marty Bry said he's comfortable with safety measures in the contract, including a requirement to eventually delete the data.

"We tightly control how that data is used," Bry said.

Privacy advocates, and even President Barack Obama, say students need more legal protection as so-called big data inundates the schools.

Obama is working on a Student Data Privacy Act. More than 100 companies have signed a privacy pledge established by privacy advocates and an industry association. Many companies that provide educational services have not, though. One of the biggest, Pearson, said in a statement to The Atlanta Journal-Constitution that it hadn't signed the pledge because it preferred to work directly with our customers rather than requiring a one-size fits all solution.

TOXIC DATA

Privacy law expert J. Reidenberg reviewed data privacy protections at 20 randomly selected school districts nationally. He and a team of lawyers determined that nearly all relied on companies to process student information but not many had adequate control over the data. Fewer than 7 percent of the contracts restricted the sale or marketing of student information, for instance.

School district cloud service agreements — which vendors to retain student information in perpetuity with alarming frequency, said the resulting report, Privacy and Cloud Computing in Public Schools.

It could affect students' lives in unknown ways, said Reidenberg, who teaches law at Fordham University in New York. He imagines a scenario where an online program and the author gets tagged as a threat? A few years ago, he said, that would have been a crackpot's delusion, but not anymore, not after revelations of the U.S. government's domestic eavesdropping.

"This data just hangs around now," he said. "It can become toxic."

OZONE

CONTINUED FROM A1

baseline levels of ozone in the Western U.S. In about a week, winds carry ozone formed by emissions from cars, factories and power plants in Asia to the U.S. West Coast, where it can add to locally generated pollution, worsening smog in cities such as Bakersfield, Fresno and Los Angeles.

The phenomenon is fueling a debate about just how much Asia is to blame for bad air in the U.S., one that could soon have health consequences for people across the West.

COMPLIANCE QUESTIONS

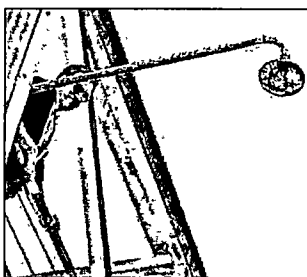
Experts say that as U.S. air quality improves, Asian emissions — previously thought to have a negligible effect here — are having a stronger influence on smog levels, particularly in Western states that sit at higher elevation and are first exposed to the pollutants. In a development that has troubled health advocates, some local pollution regulators have begun arguing that they should not be penalized if Asian pollution is causing local smog to exceed health standards under the Clean Air Act.

Speakeading that effort is the San Joaquin Valley Air Pollution Control District, which regulates industry to protect nearly 4 million people who live in some of the nation's dirtiest air.

The regional agency has made quantifying Asia's contribution to local pollution a top priority in the last few years. In 2011, the district began funding Faloona's research.

Last year, the agency submitted a first-of-its-kind petition to the U.S. Environmental Protection Agency asking to be exempted from penalties for violating a health standard because of ozone pollution from Asia. On Aug. 10, 2012, pollution from Asia pushed smog levels in Fresno above a federal standard, the air district said.

The EPA imposed penalties on the region after it failed to meet a 2010 dead-



Atmospheric scientist Ian Faloona checks an intake tube mounted outside the Bernard M. Oliver Observing Station on Chews Ridge near Carmel, Calif.

line to clean up ozone pollution. Valley air quality regulators have since collected more than \$100 million in fines, mostly through an extra \$12 a year in vehicle registration fees.

"Our residents shouldn't be penalized for pollution that comes from elsewhere," said Seyyed Sadredin, executive director of the San Joaquin Valley air quality district.

The EPA did not act on the San Joaquin Valley air district's request, saying that it was not submitted through the appropriate process and that the district can meet the health standard violated despite pollution from Asia.

STANDARDS IN THE FUTURE

Jed Anderson, a Houston-area lawyer who focuses on air quality compliance, said the request by the San Joaquin Valley is "not going to be unique for very long."

It opens the door for air quality agencies across the

nation to consider foreign pollution as a factor in local air quality violations.

The EPA has proposed tightening ozone limits, from 75 parts per billion to between 65 and 70 parts per billion, later this year. A new standard would put more areas of the country in violation of air quality standards and place parts of the West in a tough spot between a rising baseline of ozone and stricter federal limits.

Limiting pollution flowing in from Asia would require an international treaty, said Owen Cooper, an atmospheric scientist at the Cooperative Institute for Research in Environmental Sciences in Boulder, Colo.

Such a deal is unlikely, leaving U.S. regulators to seek further cuts in smog-forming pollutants, he said.

"Here in Denver, our emissions have come down enormously due to cleaner cars, but our ozone pollution isn't coming down. It's kind of stuck."

COURTHOUSE

CONTINUED FROM A1

program for years.

"This is a natural step in that progression," Dillon said.

The school's share of the investment in the new center was about \$1.3 million, raised from private sources including the Laura Moore Cunningham Foundation, he said.

The new location will give students a front-row seat to Idaho's political and justice systems. They'll be within shouting distance of lawmakers, state agencies and a slew of lobbying and law firms in the vicinity of the Capitol.

"Down on Capitol Mall, they'll have an opportunity to network," Dillon said. The university's longtime progression toward offering



KATHERINE JONES / Jones@idahostatesman.com Law students will be the only ones to benefit from upgrades to the old courthouse. The public can use the new state law library for research and take advantage of legal outreach programs set to be housed in the building.

a full law-school program in Boise is still in play, Dillon said.

"At this point, we'll get second- and third-year (students) into the building," he said. "Then, it's just a matter of what student needs are here in Idaho and the

Northwest. ... If there's a demand, we'll assess it at that time. It's got to be smart for us financially, it's got to be smart for the state ... and at a cost that students can afford."

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Attorneys for Petitioner
Greater Boise Auditorium District

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THIS MATTER OP:

GREATER BOISE AUDITORIUM DISTRICT,
PETITIONER.

Case No. CV-07-2014-23695

NOTICE OF FILING PETITION FOR
JUDICIAL CONFIRMATION AND NOTICE OF
HEARING THEREON

NOTICE IS HEREBY GIVEN that Petitioner, Greater Boise Auditorium District, a public body organized and operating as an auditorium district pursuant to Idaho Code Title 67, Chapter 49 (hereinafter referred to as the "District") has filed its Petition for Judicial Confirmation in the above matter (the "Petition") pursuant to the Idaho Judicial Confirmation Law, Idaho Code § 7-1301 et seq., requesting a judicial confirmation and determination of the power and authority of the District to enter into a Lease Agreement (Annual Appropriation) (the "Lease Agreement") to finance the acquisition of certain condominium units containing a new ballroom facility, related kitchen and ancillary facilities along with related soft costs and equipment (the "Financed Project"), to improve and expand its existing convention center and public event facilities in downtown Boise known as the "Boise Center," based on the finding that the Lease Agreement is not an indebtedness or liability prohibited under Article VIII, § 3 of the Idaho Constitution. The initial term of the Lease Agreement will end at the conclusion of the District's fiscal year following commencement, and will be renewable for additional terms of one year only upon appropriation, budgeting and affirmative notice of the intent to renew the Lease Agreement by the District. The Petitioner estimates that the cost of the Financed Project will be approximately \$19,051,084, plus related soft costs and equipment, for a total Financed Project cost of approximately \$21,236,400, plus related reserves and financing costs.

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The Lease Agreement is more particularly described in the Petition and Resolution of the District approving the Petition adopted on November 20, 2014 (the "Resolution"). Full and complete copies of the Petition, the Lease Agreement and the Resolution may be examined at the District's administrative offices located at 850 W. Front Street, Boise, Idaho.

NOTICE IS FURTHER GIVEN that a hearing on the Petition shall be held on February 25, 2015, at 3:00 p.m. in the District Court at the Ada County Courthouse, 200 W. Front Street, Boise, Idaho before the Honorable Lynn G. Norstrom.

WITNESS my hand and the seal of the Court this 20th day of January, 2015.

CLERK OF THE COURT

CHRISTOPHER D. BUCH

By TESSIE L. RAD

Deputy Clerk

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*Student Checking and Premier Checking excluded. All offers valid for any other consumer checking account opened at a branch or account application submitted on bankofthewest.com between 01/24/15 and 03/06/15 with a minimum opening deposit of \$100 or more with funds new to Bank of the West (Bank) received and posted to the account no later than 03/13/15.

*To receive the \$100 bonus, customer must have a direct deposit of at least \$250 (two or more direct deposits that add up to \$250 do not qualify) posted to the account by 05/29/15. Direct deposit must be payroll, Social Security, pension or other government benefits.

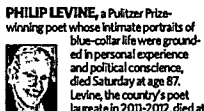
*To receive the \$50 bonus, customer must request, receive and use a new Bank of the West Debit Card linked to the new checking account for 10 or more debit card purchases all of which must post to the account by the last business day of the month for each of the first two full calendar months immediately following the month in which the opening deposit posts to the account, or a total of 20 or more transactions. Each purchase must be \$3 or more. All required purchases must be posted by 05/29/15.

Offer is not available to existing Bank of the West customers with an open checking account as of 01/23/15 or the customer or other individuals residing at the same address received or may receive any other consumer checking bonus from the Bank between 01/01/14 and 05/29/15, then no one at that address is eligible. Limit of one bonus per individual and per mailing address. Bonus cannot be combined with any other offers. Employees of Bank of the West and its affiliates are not eligible for this offer. Account must be in open status and have a positive balance as of 05/29/15 to be eligible to receive any bonus. Bonus will be credited to the open checking account by 06/30/15. Offer does not apply to multiple checking accounts. Bank will classify the cash bonus as interest paid to the checking account. Any applicable taxes associated with this offer are the responsibility of the account holder. To the extent required by law, Bank will report total value of the offer to the IRS on Form 1099 for tax year 2015. All accounts must agree to the Bank's standard terms and conditions and Schedule of Fees and Charges.

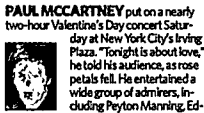
There is a Monthly Service Charge that ranges from \$6 to \$30 depending on which checking account you open. Check with your local branch for additional details and options to waive the Monthly Service Charge. You can also visit: www.bankofthewest.com/personal-banking/checking-accounts/compare-checking-accounts.html. An early closure fee of \$25 will apply if an account is closed within 91 days of the account opening date.

Member FDIC. Equal Housing Lender. © 2015 Bank of the West.

Names in the news



PHILIP LEVINE, a Pulitzer Prize-winning poet whose intimate portraits of blue-collar life were grounded in personal experience and political conscience, died Saturday at age 87. Levine, the country's poet laureate in 2011-2012, died at his home in Fresno, Calif., of pancreatic and liver cancer, his wife said Sunday. A native of Detroit and son of Russian Jewish immigrants, Levine was profoundly shaped by his working-class childhood and years spent in jobs ranging from driving a truck to assembling parts at a Chevrolet plant. He was among the country's most decorated poets, winning the Pulitzer in 1995 for "The Simple Truth" and National Book Awards for the 1979 collection "Ashes" and for "What Work Is."



PAUL MCCARTNEY put on a nearly two-hour Valentine's Day concert Saturday at New York City's Irving Plaza. "Tonight is about love," he told his audience, as rose petals fell. He entertained a wide group of admirers, including Peyton Manning, Edie Murphy, Emma Stone, Tom Hanks and U.S. Secretary of State John Kerry. Other celebs who attended included Jim Carrey, Paul Rudd, Kristin Weig, Q-Tip, Charlie Day, Jason Sudeikis, David Spade, Andy Cohen and Billy Crystal.

HAPPY BIRTHDAY Actor William B. Davis ("Greatest American Hero") is 64; singer James Ingram is 63; actor Jaye Barlow is 58; rapper-actor Ice-T is 57; guitarist Andy Taylor (Duran Duran) is 54; actress Elisabeth Olsen is 26.

The Associated Press

BIRTHDAY HOROSCOPE

Your strength grows with your years. The next three weeks will bring you many treats and reasons to appreciate your colleagues. March also has a heart gift for you: A person who makes you happy will make you even happier. July brings you the chance to do something daring. July brings an addition to your family. **HOROSCOPES, E3**

LOTTERY NUMBERS

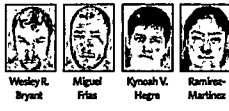
IDAHO PICK 3 Day: 2-6-6, Night: 0-8-0

IDAHO HOT LOTTO 2-14-22-24-36, Hotball: 7
Jackpot: \$4.66 million, no winners
Wednesday's estimated jackpot: \$4.78 million

IDAHO POWERBALL 2-24-44-45-51
Powerball: 2
Jackpot: \$40 million, no winners
Wednesday's estimated jackpot: \$50 million

IDAHO WILDCARD 3-9-10-14-31, A ●
Jackpot: \$285,000, no winners
Wednesday's estimated jackpot: \$290,000

18 stories to catch up on



1 Four arrested in connection with robbery early Sunday

BOISE — Police were called just after midnight to a report of a fight in Downtown Boise near the intersection of North 13th and West Front streets. Investigating officers located a man in the area who had suffered an injury to his face, and he told police that a group of people had chased him and stolen his wallet, iPod and phone. Four people matching the suspect's descriptions were found in a park nearby, police said. Three of them were charged with felony robbery: Kynosh V. Hegre, 18, no known address; Wesley R. Bryant, 24, no known address; and Miguel Frías, 27, no known address.

The fourth person, Maria Guadalupe Ramirez-Martinez, 29, no known address, was charged with felony possession of a controlled substance-meth and an outstanding warrant.

2 Two drivers hospitalized after Garden City accident

GARDEN CITY — The injuries resulting from the Sunday afternoon collision were not believed to be life-threatening, according to Garden City police. One of the drivers was also cited for failing to stop at a red light.

The collision occurred at the intersection of Chinden Boulevard and Garrett Street. It was reported at 12:29 p.m.

Police said Bolesan Mary Osterman, 86, was traveling south on Garrett toward Chinden when she drove through a red light and collided with a vehicle traveling west on Chinden. No information was released about the other driver.

The drivers of both vehicles were wearing their seat belts. Police say the safety restraints likely prevented them from suffering serious injury in the crash.

3 Two hospitalized after two-vehicle crash in Boise

BOISE — The victims were riding a motorcycle Friday when they were involved in a collision with an SUV in West Boise, according to Boise police. Their injuries were not believed to be life-threatening.

The collision, which occurred at the intersection of Five Mile Road and Jewell Lane, was reported at 5:09 p.m., an Ada County dispatcher said.

Police say a white SUV that was southbound on Five Mile and turning east onto Jewell collided with the motorcycle, which was traveling north on Five Mile.

The investigation into the cause of the crash is ongoing. No citations have been issued.

4 Local artists create shrinky dinks to benefit Surel's Place

GARDEN CITY — The shrinky dinks will be auctioned at "The Greatest Shrinky Dink Show and Auction on Earth" on May 9 to benefit Surel's Place, an artist-in-residency, nonprofit program in Garden City that provides space and time for local artists to create and explore their talents.

Boise artist Nicolet Laurson, below, was among the group of artists who gathered at Surel's Place on Sunday to make the shrinky dinks, which are small, hard plates that are created by heating flexible sheets. For more information about Surel's Place, go to surelspc.org/surel.



DARIN OSWALD / dcoval@idahostatesman.com

5 DUI suspect who allegedly fled police is identified

BOISE — Gabriel A. Garcia, of Nampa, is being held in the Canyon County Jail on felony charges after police say he nearly struck a pedestrian Saturday on a Boise sidewalk, fled a traffic stop, sped dangerously through traffic on Interstate 84 and did not stop until police rammed his vehicle in Nampa.



Garcia, 24, was charged with misdemeanor DUI, felony aggravated assault and felony eluding police officers. Garcia's breath alcohol test showed his blood alcohol was 0.08 and 0.04, well above the legal limit of 0.08, according to police.

Boise police said they were alerted to a possible drunken driver in a green pickup at 4 p.m. Saturday on West Cesar Chavez Lane who drove on a sidewalk, hit a bench and nearly hit a pedestrian.

After an officer attempted to stop the vehicle, the driver stopped briefly, then fled, police said. The suspect vehicle headed up the Connector to Interstate 84 and left the highway at Garrity Boulevard in Nampa,

with officers from Boise and Meridian in pursuit. One of the officers executed a "PTT maneuver" — essentially ramming the vehicle — and stopped the vehicle.

6 Error puts school district breakfast program at risk

CALDWELL — A Vallivue School District employee made a clerical mistake on a 2008 application to join a federal program providing free breakfasts for all students, not just those meeting income requirements, the Idaho Press-Tribune reports.

The problem was not discovered until January. Now, district officials say they don't have the original correct records that are being requested because they only keep paperwork for nine years.

District business manager Sue Muchow said the district has to decide whether to ask students who don't qualify for free lunch to start paying for breakfasts, or to spend about \$50,000 to cover those kids until the end of the school year.

The Press-Tribune said attempts to reach the U.S. Department of Agriculture or the state Department of Education were unsuccessful.

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Boise, ID 83702-1881

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Attorneys for Petitioner

Greater Boise Auditorium District

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF:

GREATER BOISE AUDITORIUM DISTRICT,

PETITIONER.

Case No. CV-07-2014-23693

NOTICE OF FILING PETITION FOR

JUDICIAL CONFIRMATION AND NOTICE OF

HEARING THEREON

NOTICE IS HEREBY GIVEN that Petitioner, Greater Boise Auditorium District, a public body organized and operating as an auditorium district pursuant to Idaho Code Title 67, Chapter 49 (hereinafter referred to as the "District") has filed its Petition for Judicial Confirmation in the above matter (the "Petition") pursuant to the Idaho Judicial Confirmation Law, Idaho Code § 7-1301 et seq., requesting a judicial confirmation and determination of the power and authority of the District to enter into a Lease Agreement (Annual Appropriation) (the "Lease Agreement") to finance the acquisition of certain condominium units containing a new ballroom facility, related kitchen and ancillary facilities along with related soft costs and equipment (the "Financed Project"), to improve and expand its existing convention center and public event facilities located at the "Boise Center," based on the finding that the Lease Agreement is not an indebtedness or liability prohibited under Article VIII, § 3 of the Idaho Constitution. The initial term of the Lease Agreement will end at the conclusion of the District's fiscal year following commencement, and will be renewable for additional terms of one year only upon appropriation, budgeting and affirmative notice of the intent to renew the Lease Agreement by the District. The Petitioner estimates that the cost of the Financed Project will be approximately \$19,091,084, plus related soft costs and equipment, for a total Financed Project cost of approximately \$21,236,400, plus related reserves and financing costs.

The District has entered into an agreement with the Urban Renewal Agency of Boise City, Idaho, aka Capital City Development Corporation (the "Agency"), pursuant to which the Agency agrees to assist with the financing of the Financed Project. The District and the Agency have agreed that the District will assign, and the Agency will accept the assignment of, the District's right to purchase the Financed Project under the master development agreement between the District and the developer of the Financed Project. The Agency intends to issue a lease revenue note (the "Note") to finance its purchase of the Financed Project. Once purchased, the Agency will then lease the Financed Project to the District pursuant to the Lease Agreement. The Note will be repaid by the District's lease payments under the Lease Agreement. The District will pay lease payments under the Lease Agreement using a portion of the annual receipts from hotel/motel room sales tax levied and collected by the District pursuant to Idaho Code Section 67-4917B. Once the Note is paid in full, the Lease Agreement terminates and the Financed Project may be purchased by the District for a nominal amount.

The Lease Agreement is more particularly described in the Petition and Resolution of the District approving the Petition adopted on November 20, 2014 (the "Resolution"). Full and complete copies of the Petition, the Lease Agreement and the Resolution may be examined at the District's administrative offices located at 850 W. Front Street, Boise, Idaho.

NOTICE IS FURTHER GIVEN that a hearing on the Petition shall be held on February 25, 2015, at 3:00 p.m. in the District Court at the Ada County Courthouse, 200 W. Front Street, Boise, Idaho before the Honorable Lynn G. Norton.

WITNESS my hand and the seal of the Court this 20th day of January, 2015.

CLERK OF THE COURT

CHRISTOPHER D. BUCH

By: DEBBIE RAD

Deputy Clerk



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Advertising rates are for the current day, which cost an additional \$2 for all advertising. These charges are not included in the Idaho Statesman is not to be charged for stop service. Some discounts are not refundable. The company reserves the right to limit term and quantity of discounts.

Advertisers are not to be charged for stop service. Some discounts are not refundable. The company reserves the right to limit term and quantity of discounts.

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FLICKS
TIMES FOR MONDAY - THURSDAY
5:30 PM (PG-13)
6:30 PM (PG-13)
7:30 PM (PG-13)
8:30 PM (PG-13)
9:30 PM (PG-13)
10:30 PM (PG-13)
11:30 PM (PG-13)

IDAHO OUTDOORS
Thursday
Idaho Statesman

Your complete entertainment guide
Fridays
Idaho Statesman

FEB 20 2015

CHRISTOPHER D. RICH, Clerk
By KATRINA HOLDEN
DEPUTY

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Attorneys for Petitioner
Greater Boise Auditorium District

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF:

GREATER BOISE AUDITORIUM
DISTRICT,

PETITIONER.

)
) Case No. CV-OT-2014-23695

)
) SUPPLEMENTAL AFFIDAVIT OF
) PATRICK RICE IN SUPPORT OF
) PETITION FOR JUDICIAL
) CONFIRMATION

Patrick Rice, being first duly sworn under oath, deposes and says:

1. I am over the age of 18 years and competent to be a witness in the above-titled proceeding.
2. This Affidavit is intended to supplement my Affidavit of Patrick Rice in Support of Petition for Judicial Confirmation previously filed with this Court on January 26, 2015.
3. I make this Affidavit in support of Greater Boise Auditorium District's verified

SUPPLEMENTAL AFFIDAVIT OF PATRICK RICE IN SUPPORT OF PETITION FOR JUDICIAL
CONFIRMATION - 1

Petition for Judicial Confirmation (the "Petition"). I am and at all times relevant herein have been employed by the Greater Boise Auditorium District ("the District") as the Executive Director of the District. Capitalized terms used in this Affidavit have the meaning assigned to such terms in the Petition.

4. I make this Affidavit based upon my own personal knowledge, which is in part based on a review of the records of the District that have been kept in the course of the District's regular business activity, of which I share custodianship.

The District maintains records in the ordinary course of its business. These records include, but are not limited to, copies of agreements, court orders, legal documents, and other records relevant to the formation and continued operation of the District (the "Records"). The Records are made or filed at or near the time of each event recorded, by someone with personal knowledge of the events, or from information transmitted by someone with personal knowledge of the events, or from information transmitted by someone with personal knowledge of each event and a business duty to set forth information in a report or record. As the Executive Director of the District, I am directly and personally familiar with the system used to make and store the Records. I, as well as all of the employees and officers of the District, have a business duty to accurately set forth information in the Records; to set forth that information in the Records at or near the time of the occurrence; and to file all of the applicable Records in the District file related to the particular issue. The Records and information referenced in this Affidavit were obtained from the District files maintained in the ordinary course of the District's business, pursuant to the procedures and system set forth above. The Records were not produced in anticipation of trial, but instead were produced as part of the ordinary course of business.

5. By virtue of my duties at the District, I am intimately involved with the business operations and management of the District.

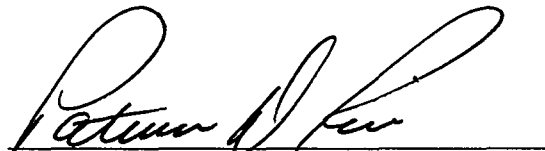
6. Attached as **Exhibit A** is a true and correct copy of the Resolution of the District Board dated January 20, 2015 committing available general funds of the District to cover the estimated \$19,091,084 purchase price of the Centre Facilities as that term is defined in the Gardner MDA (the "Resolution"). Exhibit A to the Resolution is the District's unaudited balance sheet dated November 29, 2014.

7. The Gardner MDA contemplates the District entering into a separate lease agreement for the Meeting Room Facilities, as defined therein (the "Clearwater Lease"). Annual lease payments under the Clearwater Lease are estimated to be approximately \$586,795.

8. The District estimates annual receipts from the Room Tax to be approximately \$4,889,858 in fiscal year 2015, based on historical occupancy of hotels in the District and without the addition of any hotels within the jurisdictional boundaries of the District.

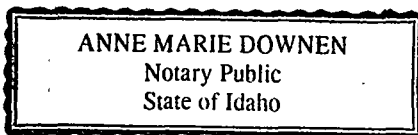
9. The District's available general funds and anticipated 2015 Room Tax receipts are sufficient to allow the District to both purchase the Centre Facilities and enter into the Clearwater Lease without exceeding its income and revenue for the current fiscal year.

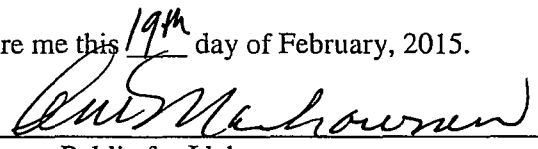
Further your affiant sayeth naught.


Patrick Rice

STATE OF IDAHO)
) ss.
County of Ada)

SUBSCRIBED AND SWORN TO before me this 19th day of February, 2015.





Notary Public for Idaho
Residing at Emmett
My commission expires 07/03/2020

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28 day of February, 2015, I caused to be served a true copy of the foregoing SUPPLEMENTAL AFFIDAVIT OF PATRICK RICE IN SUPPORT OF PETITION FOR JUDICIAL CONFIRMATION by the method indicated below, and addressed to each of the following:

John L. Runft, Esq.
Runft & Steele Law Offices, PLLC
1020 W. Main St., Ste. 400
Boise, ID 83702

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ E-mail
☐ Telecopy



Nicholas G. Miller

EXHIBIT A

[Resolution of the District committing funds for the purchase of the Centre Facilities]

A RESOLUTION OF THE BOARD OF DIRECTORS OF GREATER BOISE AUDITORIUM DISTRICT, AUTHORIZING FURTHER COMMITMENT OF FUNDS AND AUTHORIZING PREPARATION OF BALANCE SHEETS TO ACCURATELY PRESENT COMMITTED FUNDS AND OTHER ASSETS OF THE DISTRICT; AND PROVIDING FOR RELATED MATTERS

WHEREAS, Greater Boise Auditorium District (the "District") is an auditorium district organized and operating pursuant to Title 67, Chapter 49 of the Idaho Code, as amended;

WHEREAS, to evidence the District's commitment to expand its existing facilities (the "Boise Centre"), on November 14, 2011, the Board of Directors of the District (the "Board"), made a commitment of funds in the amount of \$9,000,000 to expand the Boise Centre (the "Expansion");

WHEREAS, to further evidence the District's commitment to the Expansion, the Board made an additional \$2,000,000 commitment of funds to the Expansion on November 16, 2012, and another \$2,000,000 commitment of funds to the Expansion on August 22, 2013, for total committed funds of \$13,000,000;

WHEREAS, in furtherance of the District's commitment to the Expansion, on November 20, 2014, the District approved the execution of an Amended and Restated Master Development Agreement by and between the District and KC Gardner Company, L.C. (the "Gardner MDA"), pursuant to which KC Gardner Company, L.C. (the "Developer") has agreed, among other things, to develop and construct condominium units containing a new ballroom facility, related kitchen and ancillary facilities (the "Centre Facilities") in close proximity to the Boise Centre, which Centre Facilities will be purchased by the District;

WHEREAS, the estimated cost of the Centre Facilities is \$19,091,084;

WHEREAS, in accordance with the Gardner MDA, the District previously paid to the Developer a deposit in the amount of \$2,500,000 (the "First Deposit");

WHEREAS, upon a cash purchase of the Centre Facilities by the District, the First Deposit will be credited against the purchase price at closing, such that the remaining amount that will be required from the District to purchase the Centre Facilities is approximately \$16,591,084;

WHEREAS, attached as Exhibit A is the unaudited District Balance Sheet dated as of November 30, 2014, showing the District's total assets in the amount of \$21,390,194, including the committed funds described above, and which assets exceed the purchase price of the Centre Facilities;

WHEREAS, the District desires to show on its future balance sheets the value of that real property owned free and clear by the District commonly known as "Parcel B";

WHEREAS, to evidence the District's availability of funds to purchase the Centre Facilities, the Board desires to express its intention that funds previously committed to the Expansion are available for purchase of the Centre Facilities, and to commit an additional \$3,591,084 of its available funds for the Centre Facilities, for a total of \$16,591,084 committed, in addition to the First Deposit, and to so present that commitment and the First Deposit on future balance sheets of the District;

WHEREAS, the District has entered into an Amended and Restated Development Agreement with the Urban Renewal Agency of Boise City, Idaho, aka Capital City Development Corporation (the "Agency") dated December 19, 2014 (the "Development Agreement"), whereby the District and the Agency agreed to seek nonappropriation lease financing to purchase the Centre Facilities (the "Financing"), subject to judicial validation of the Financing, all as more particularly described in the Development Agreement;

WHEREAS, in the event the District and the Agency proceed with the Financing, the Board intends to revoke the commitment of funds to the purchase of the Centre Facilities and to reallocate those funds to other costs of the Expansion or the District;

WHEREAS, the District desires to prepare an updated Balance Sheet as of January 31, 2015 to reflect the value of Parcel B in the District's assets, and to increase the amount of District funds committed for the Centre Facilities to \$16,591,084; and

WHEREAS, the Board has broad powers under Section 67-4912 to exercise management and control of the business and affairs of the District including powers necessary or incidental to, or implied from, its specific powers.

NOW, THEREFORE, IT IS RESOLVED BY THE BOARD AS FOLLOWS:

Section 1. The District shall commit the \$13,000,000 previously committed to the Expansion to the purchase price of the Centre Facilities.

Section 2. The District shall commit an additional \$3,591,084 of available District funds to the Centre Facilities such that the total of (i) the \$13,000,000 committed to date, (ii) the First Deposit, and (iii) the additional \$3,591,084, shall equal the purchase price of the Centre Facilities.

Section 3. In the event the District proceeds with the Financing to purchase the Centre Facilities, the funds committed in Sections 1 and 2 above shall be reallocated to other costs of the Expansion or the District, as determined by the Board.

Section 4. The District shall update the District's Balance Sheet to add the value of Parcel B as an asset of the District and to show the commitment of \$16,591,084 to the Centre Facilities.

Section 5. If any section, paragraph, clause or provision of the foregoing resolutions shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of the resolutions.

PASSED AND ADOPTED by Greater Boise Auditorium District on January 20, 2015.

APPROVED AND EXECUTED by the Chairman of the Board of Directors of the District, and attested by the Executive Director or the Secretary of the Board of Directors of the District, on this 20th day of January 2015.

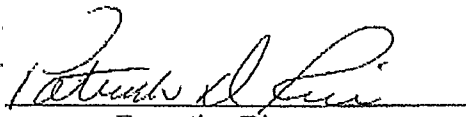
APPROVED:

By:


Chairman

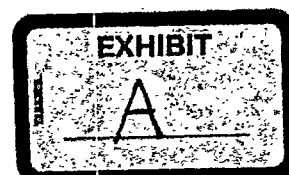
ATTEST:

By:


Executive Director

Greater Boise Auditorium District
BALANCE SHEET
NOVEMBER 29, 2014
UNAUDITED

	YEAR TO DATE	
	ACTUAL	PRIOR YEAR
Assets		
Cash and cash equivalents	\$2,481,456	\$2,013,206
Investments	15,872,474	14,680,073
Receivables:		
Taxes receivable	422,787	425,884
Interest receivable	100,952	77,058
Prepaid expenses	12,525	
Total Current Assets	18,890,194	17,196,221
Assets In Progress - Centre East	2,500,000	
Total Assets	21,390,194	17,196,221
Liabilities		
Accounts payable	622	13,706
Accrued expenses	66,433	300
Total Current Liabilities	67,055	14,006
Fund Balance		
Nonspendable:		
Receivables	523,738	502,943
Prepaid expenses	12,525	
Committed:		
Expansion Plans	13,000,000	13,000,000
Assigned:		
Operating requirements		550,000
Capital project requirements		112,000
Unassigned	7,786,875	3,017,273
	21,323,138	17,182,216
Total Liabilities and Fund Balance	\$21,390,193	\$17,196,222



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Telephone: (208) 388-1200
Facsimile: (208) 388-1300

FEB 20 2015

CHRISTOPHER D. RICH, Clerk
By KATRINA HOLDEN
DEPUTY

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S.C. Danielle Quade, ISB No. 6363
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Attorneys for Petitioner
Greater Boise Auditorium District

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IN THE MATTER OF:

GREATER BOISE AUDITORIUM
DISTRICT,

PETITIONER.

)
) Case No. CV-OT-2014-23695

)
) SUPPLEMENTAL AFFIDAVIT OF JOHN
) BRUNELLE IN SUPPORT OF PETITION
) FOR JUDICIAL CONFIRMATION

John Brunelle, being first duly sworn under oath, deposes and says:

1. I am over the age of 18 years and competent to be a witness in the above-titled proceeding.

2. This Affidavit is intended to supplement my Affidavit of John Brunelle in Support of Petition for Judicial Confirmation previously filed with this Court on January 26, 2015.

3. I make this Affidavit in support of Greater Boise Auditorium District's verified

SUPPLEMENTAL AFFIDAVIT OF JOHN BRUNELLE IN SUPPORT OF PETITION FOR
JUDICIAL CONFIRMATION - 1

Petition for Judicial Confirmation ("Petition"). I am and at all times relevant herein have been employed by the Urban Renewal Agency of Boise City, Idaho, aka Capital City Development Corporation (the "Agency") as the Executive Director of the Agency. I have served in this capacity for approximately a year and half.

4. I make this affidavit based upon my own personal knowledge, which is in part based on a review of the records of the Agency that have been kept in the course of the Agency's regular business activity, of which I share custodianship.

The Agency maintains records in the ordinary course of its business. These records include, but are not limited to, copies of agreements, court orders, legal documents, and other records relevant to the formation and continued operation of the Agency (the "Records"). The Records are made or filed at or near the time of each event recorded, by someone with personal knowledge of the events, or from information transmitted by someone with personal knowledge of the events, or from information transmitted by someone with personal knowledge of each event and a business duty to set forth information in a report or record. As the Executive Director of the Agency, I am directly and personally familiar with the system used to make and store the Records. I, as well as all of the employees and officers of the Agency, have a business duty to accurately set forth information in the Records that are part of the Agency's files; to set forth that information in the Records at or near the time of the occurrence; and to file all of the applicable Records in the Agency file related to the particular issue. The Records and information referenced in this Affidavit were obtained from the Agency files maintained in the ordinary course of the Agency's business, pursuant to the procedures and system set forth above. The Records were not produced in anticipation of trial, but instead were produced as part of the ordinary course of business.

5. By virtue of my duties at the Agency, I am involved with the business operations

and management of the Agency.

6. The Agency is an urban renewal agency of the City of Boise City, Idaho, organized and operating pursuant to Title 50, Chapters 20 and 29, Idaho Code (the "Urban Renewal Law").

7. The Agency is an independent public body corporate and politic and was created by resolution as provided in section 50-2005, Idaho Code. (Resolution No. 1154, approved on August 23, 1965.) The original Boise Central District Urban Renewal Area Plan was certified by the Boise City Council on May 22, 1967, and an urban renewal plan for the Central District was adopted. The Central District Plan was amended several times, most recently in 2007 by approval of Ordinance No. 6576 on June 26, 2007. True and correct excerpts from the Central District Plan, as amended, are attached as **Exhibit A** to this Affidavit, including the following sections: 301(f), 306, 308.02, 309.01, 309.03, 502, 800, Attachment No. 3E Development Strategy (July 1994) of the Central District Plan.

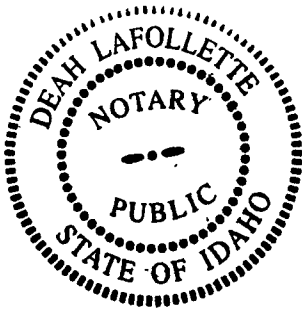
8. The Agency is governed by a nine member board of commissioners appointed by the Mayor, by and with the consent of the Boise City Council. There is currently one vacant board member position.

Further your affiant sayeth naught.


John Brunelle

STATE OF IDAHO)
) ss.
County of Ada)

SUBSCRIBED AND SWORN TO before me this 19th day of February, 2015.



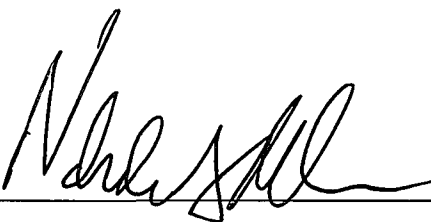
Deah LaFollette
Notary Public for Idaho
Residing at Ada County
My commission expires 8-17-17

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of February, 2015, I caused to be served a true copy of the foregoing SUPPLEMENTAL AFFIDAVIT OF JOHN BRUNELLE IN SUPPORT OF PETITION FOR JUDICIAL CONFIRMATION by the method indicated below, and addressed to each of the following:

John L. Runft, Esq.
Runft & Steele Law Offices, PLLC
1020 W. Main St., Ste. 400
Boise, ID 83702

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ E-mail
☐ Telecopy



Nicholas G. Miller

EXHIBIT A

**BOISE CENTRAL DISTRICT
URBAN RENEWAL PROJECTS I AND II
IDAHO R-4 AND R-5
URBAN RENEWAL AGENCY OF BOISE CITY
BOISE, IDAHO**

**2007 AMENDED AND RESTATED
URBAN RENEWAL PLAN
JUNE 2007**

**Ordinance No. 6576
Adopted on June 26, 2007
Effective July 23, 2007, publication**

Section 300

PROPOSED REDEVELOPMENT ACTIONS

Section 301

General

The Agency proposes to eliminate and prevent the spread of blight and deterioration in the Project Area by:

- a. Acquisition of certain real property;
- b. Demolition or removal of certain buildings and improvements;
- c. Provision for participation by property owners within the Project Area;
- d. Management of any property acquired by and under the ownership and control of the Agency;
- e. Provision for relocation assistance to displaced Project occupants, as required by law;
- f. Installation, construction, or reconstruction of streets, utilities, parking facilities, and other public improvements, including, but not limited to, a convention center and courthouse facility;
- g. Disposition of property for uses in accordance with this Plan;
- h. Redevelopment of land by private enterprise or public agencies for uses in accordance with this Plan;
- i. Rehabilitation of structures and improvements by present owners, their successors, and the Agency;
- j. Assembly of adequate sites for the development and construction of commercial facilities;
- k. To the extent allowed by law, lend or invest of federal funds to facilitate redevelopment; and
- l. Construction of foundations, platforms, and other like structural forms necessary for the provision or utilization of air rights and sites for buildings to be used for residential, office, commercial, retail, hotel and other uses permitted by the Boise City Zoning Ordinance and to provide utilities to the development site.

In the accomplishment of these purposes and activities and in the implementation and furtherance of this Plan, the Agency is authorized to use all the powers provided in this Plan and all the powers now or hereafter permitted by law.

Section 302 Urban Renewal Plan Objectives

Urban renewal action is necessary in the Project Area to combat problems of deteriorated or deteriorating conditions and economic obsolescence.

The Project Area consists of approximately ten (10) blocks within the Boise Central Business District. The area has had a history of declining tax base primarily attributed to: deteriorating structures; inadequate and inconvenient parking; and poorly maintained properties; abandoned railroad right-of-way; and other deteriorating factors.

This environment contrasted sharply with the growing economic and cultural strength of Boise City and the Ada County region for which the Boise Central Business District serves as the commercial and cultural center.

Hence, the Urban Renewal Plan for the Project Area is a proposal to provide innovative, imaginative, and contemporary residential, commercial, office, hotel and other facilities through redevelopment and as allowed by the Boise City Zoning Ordinance; to remove impediments to land disposition and development; as well as to achieve changes in land use. It is further designed to eliminate unhealthy, unsanitary, or unsafe conditions, and otherwise prevent the extension of blight and deterioration.

The streets to be vacated, or relocated, will create additional buildable area for residential, office, commercial, retail, hotel, or public use and other uses permitted by the Boise City Zoning Ordinance.

Air rights and subterranean rights may be disposed of for any permitted use within the Project Area boundaries.

Less than fee acquisition may be utilized by the Agency when and if necessary to promote redevelopment in accordance with the objectives of the Plan.

Temporary project improvements shall be provided to facilitate adequate vehicular and pedestrian circulation.

All existing alleys within the Project Area may be vacated to permit development as well as encourage variety and flexibility of design within the periphery blocks, subject to standards and policies imposed by Boise City and the Ada County Highway District ("ACHD"). Generally all alleys proposed for vacation within the Central District have been vacated with utility reservations.

The purpose of this section is to allow the Agency to use its eminent domain authority to acquire properties necessary for the construction of public improvements or for acquisition of those sites that are deteriorated or deteriorating as described above.

Under the provisions of the Act, the urban renewal plan "shall be sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal area." [Idaho Code Section 50-2018(1)] As project activities under this Plan have been substantially completed, the Agency does not anticipate any wide spread use of its property acquisition authority and has not identified any specific parcel or parcels for acquisition. The Agency reserves the right to determine which properties, if any, should be acquired. However, the Agency's authority to invoke eminent domain to acquire real property for disposition to private parties for economic development is limited by House Bill 555 adopted by the 58th Idaho Legislature, Second Session, 2006, Session Law Chapter 96.

Section 305.02 Personal Property

Generally, personal property shall not be acquired. However, where necessary in the execution of this Plan, and where allowed by law, the Agency is authorized to acquire personal property in the Project Area by any lawful means.

Section 306 Property Management

During such time such property, if any, in the Project Area is owned by the Agency, such property shall be under the management and control of the Agency. Such property may be rented or leased by the Agency pending its disposition for redevelopment, and such rental or lease shall be pursuant to such policies as the Agency may adopt.

Section 307 Relocation Provisions

If the Agency receives federal funds for real estate acquisition and relocation, the Agency shall comply with 24 C.F.R. Part 42, implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. The Agency may also undertake relocation activities for those not entitled to benefit under federal law, as the Agency may deem appropriate for which funds are available. The Agency's activities should not result in the displacement of families within the area. In the event the Agency's activities result in displacement, the Agency will compensate such residents by providing reasonable moving expenses into decent, safe, and sanitary dwelling accommodations within their means and without undue hardship to such families. For any other activity, the Agency will comply with the provisions of the Law regarding relocation.

The Agency reserves the right to extend benefits for relocation to those not otherwise entitled to relocation benefits as a matter of state law under the Act or the Law. The Agency may determine to use as a reference the relocation benefits and guidelines promulgated by the

federal government, the state government, or local government, including the Idaho Transportation Department. The intent of this section is to allow the Agency sufficient flexibility to award relocation benefits on some rational basis, or by payment of a lump sum amount on a per case basis. The Agency may also consider the analysis of replacement value for the compensation awarded to either owner occupants or businesses displaced by the Agency to achieve the objectives of this Plan. The Agency may adopt relocation guidelines which would define the extent of relocation assistance in non-federally-assisted projects and which relocation assistance to the greatest extent feasible would be uniform.

For displacement of families, the Agency shall comply with, at a minimum, the standards set forth in the Law. The Agency shall also comply with all applicable state laws concerning relocation benefits.

Section 308 Demolition, Clearance, and Building and Site Preparation

Section 308.01 Demolition and Clearance

The Agency is authorized (but not required) to demolish and clear buildings, structures, and other improvements from any real property in the Project Area as necessary to carry out the purposes of this Plan.

Section 308.02 Preparation of Building Sites

The Agency is authorized (but not required) to prepare, or cause to be prepared, as building sites any real property in the Project Area owned by the Agency. In connection therewith, the Agency may cause, provide for, or undertake the installation or construction of streets, streetscapes, utilities, parks, plazas, playgrounds, parking facilities, a convention center, and other public improvements necessary to carry out this Plan. The Agency is also authorized (but not required) to construct foundations, platforms, and other structural forms necessary for the provision or utilization of air rights sites for buildings to be used for residential, office, commercial, retail, hotel, and other uses allowed by the Boise City Zoning Ordinance.

Section 309 Real Property Disposition and Development

Section 309.01 General

For the purposes of this Plan, the Agency is authorized to sell, lease, exchange, subdivide, transfer, assign, pledge, encumber by mortgage or deed of trust, or otherwise dispose of any interest in real property under the reuse provisions set forth in Idaho Code Section 50-2011. To the extent permitted by law, the Agency is authorized to dispose of real property by negotiated lease, sale, or transfer without public bidding.

Real property acquired by the Agency may be conveyed by the Agency and, where beneficial to the Project Area, without charge to any public body as allowed by law. All real

property acquired by the Agency in the Project Area shall be sold or leased to public or private persons or entities for development for the uses permitted in this Plan.

All purchasers or lessees of property acquired from the Agency shall be obligated to use the property for the purposes designated in this Plan, to begin and complete development of the property within a period of time which the Agency fixes as reasonable and to comply with other conditions which the Agency deems necessary to carry out the purposes of this Plan.

Section 309.02 Disposition and Development Documents

To provide adequate safeguards to ensure that the provisions of this Plan will be carried out and to prevent the recurrence of deteriorating or deteriorated conditions, all real property sold, leased, or conveyed by the Agency, as well as all property subject to DDAs, is subject to the provisions of this Plan.

The Agency shall reserve such powers and controls in the DDAs as may be necessary to prevent transfer, retention, or use of property for speculative purposes and to ensure that development is carried out pursuant to this Plan.

Leases, deeds, contracts, agreements, and declarations of restrictions of the Agency may contain restrictions, covenants, covenants running with the land, rights of reverter, conditions subsequent, equitable servitudes, or any other provisions necessary to carry out this Plan. Where appropriate, as determined by the Agency, such DDAs, or portions thereof, shall be recorded in the office of the Recorder of Ada County.

All property in the Project area is hereby subject to the restriction that there shall be no discrimination or segregation based upon age, race, color, disability/handicap, creed, religion, sex, marital status, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of property in the Project Area. All property sold, leased, conveyed or subject to a DDA shall be expressly subject by appropriate documents to the restriction that all deeds, leases, or contracts for the sale, lease, sublease, or other transfer of land in the Project Area shall contain such nondiscrimination and nonsegregation clauses as required by law.

The land and/or air rights and subterranean rights acquired by the Agency shall be disposed of subject to a DDA between the Agency and the developers. The developers (including owner/participants) will be required by the DDA to observe the Land Use and Building Requirements provision of this Plan and to submit a Redevelopment Schedule satisfactory to the Agency. Schedule revisions will be made only at the option of the Agency.

In addition, the following requirements and obligations may be included in the DDA, as required by law or as determined in the Agency's discretion to be in the best interest of the Agency and the public.

achieve attractive and economically competitive facilities appropriate to a central business district.

- i. The developer will cooperate and participate in the Business Improvement District.

Section 309.03 Development by the Agency

To the extent now or hereafter permitted by law, the Agency is authorized to pay for, develop, or construct any publicly owned building, facility, structure, or other improvement, either within the Project Area, for itself or for any public body or entity, which buildings, facilities, structures, or other improvements are or would be of benefit to the Project Area. Specifically, the Agency may pay for, install, or construct the buildings, facilities, structures, and other improvements identified in the Attachments, attached hereto and incorporated herein by reference, and may acquire or pay for the land required therefore.

The Agency may also prepare properties for development by renovation or other means as allowed by law. The Agency may also, as allowed by law, assist in the development of private projects.

In addition to the public improvements authorized under Idaho Code Sections 50-2007, 50-2018, and 50-2903(9), (13), and (14) and the specific publicly owned improvements identified in the Appendix of this Plan, the Agency is authorized to install and construct, or to cause to be installed and constructed, within or without the Project Area, for itself or for any public body or entity, for the benefit of the Project Area, public improvements and public utilities, including, but not limited to, the following:

- a. Overpasses and underpasses
- b. Parks, plazas, and pedestrian paths
- c. Playgrounds
- d. Parking facilities
- e. Landscaped areas
- f. Street and streetscaping improvements
- g. Water, sewer, and storm drainage facilities
- h. Telecommunications facilities
- i. Convention Center
- j. Courthouse facility
- k. Transit facilities

Section 309.04 Development Plans

All development plans (whether public or private) shall be submitted to the Agency for approval and architectural review. All development in the Project Area must conform to City design review standards and those standards specified in Section 405, *infra*.

Section 500 METHODS OF FINANCING THE PROJECT

Section 501 General Description of the Proposed Financing Method

The Agency is authorized to finance this Project with financial assistance from the City, State of Idaho, federal government, interest income, Agency bonds, donations, loans from private financial institutions, the lease or sale of Agency-owned property, or any other available source, public or private, public parking revenue, revenue allocation funds as allowed by the Act, including assistance from any taxing district or any public entity including, but not limited to, the Greater Boise Auditorium District.

The Agency is also authorized to obtain advances, borrow funds, and create indebtedness in carrying out this Plan. The principal and interest on such advances, funds, and indebtedness may be paid from any other funds available to the Agency. The City, as it is able, may also supply additional assistance through City loans and grants for various public facilities.

The City or any other public agency may expend money to assist the Agency in carrying out this Project.

The Agency may also provide certain grants or loans to property owners, business owners, or others as allowed by law.

Section 502 Revenue Bonds

Under the Law, the Agency is authorized to issue revenue bonds to finance certain public improvements identified in the Plan. Under this type of financing, the public entity would pay the Agency a lease payment annually which provides certain funds to the Agency to retire the bond debt. Another variation of this type of financing is sometimes referred to as conduit financing, which provides a mechanism where the Agency uses its bonding authority for the project, with the end user making payments to the Agency to retire the bond debt. These sources of revenues are not related to revenue allocation funds and may not be particularly noted in the Attachment No. 5, because of the pass-through aspects of the financing. Under the Act, the Attachment No. 5 focuses on the revenue allocation portion of the Agency's funding for accomplishing the Plan.

Revenue bonds typically are for a longer period of time than the 24-year period set forth in the Act. However, revenue bonds do not involve revenue allocation funds, but rather funds from the end users which provide a funding source for the Agency to continue to own and operate the facility beyond the term of the Plan as allowed by Idaho Code Section 50-2905(7).

Neither the members of the Agency nor any persons executing the bonds shall be liable personally on the bonds by reason of their issuance.

- k. The wavier of any hookup or installation fee for sewer, water, or other utility services for any facility owned by any public agency, including the Agency and facility.
- l. The wavier of any application or impact fee assessed by the City, if the City deems such wavier appropriate.
- m. Joint funding of certain public improvements and coordination with the City's arts programs.

The foregoing actions to be taken by the City do not constitute any commitment for financial outlays by the City.

Section 700 LONG-TERM MAINTENANCE & ENFORCEMENT

Section 701 Maintenance of Public Improvements

The Agency has not identified any commitment or obligation for long-term maintenance of the public improvements identified. The Agency will need to address this issue with the appropriate entity, public or private, who has benefited from or is involved in the ongoing preservation of the public improvement.

Section 702 Enforcement

The administration and enforcement of this Plan, including the preparation and execution of any documents implementing this Plan, shall be performed by the Agency and/or the City.

The provisions of this Plan or other documents entered into pursuant to this Plan may also be enforced by court litigation instituted by either the Agency or the City. Such remedies may include, but are not limited to, specific performance, damages, reentry, injunctions, or any other remedies appropriate to the purposes of this Plan. In addition, any recorded provisions which are expressly for the benefit of owners of property in the Project Area may be enforced by such owners.

Section 800 DURATION OF THIS PLAN

Except for the nondiscrimination and nonsegregation provisions which shall run in perpetuity, the provisions of this Plan shall be effective, and the provisions of other documents formulated pursuant to this Plan may be made effective, for thirty (30) years from the date of adoption of this Plan by the City Council through December 31, 2017, which date shall be deemed the termination date of the Plan, except for any revenue allocation proceeds received in calendar year 2018.

This Plan shall terminate no later than December 31, 2017, except for revenues which may be received in 2018. Either on January 1, 2017, or if the Agency determines to terminate the Plan earlier, on the earlier termination date:

- a. When the budget for Revenue Allocation Area, which is associated with the Project Area, indicates that all financial obligations have been provided for, the principal of and interest on such moneys, indebtedness, and bonds have been paid in full, or when deposits in the special fund or funds created under this Plan are sufficient to pay such principal and interest as they come due and to fund reserves, if any, or any other obligations of the Agency funded through revenue allocation proceeds shall be satisfied and the Agency has determined no additional project costs need be funded through revenue allocation financing, the allocation of revenues under Section 50-2908, Idaho Code, shall thereupon cease; any moneys in such fund or funds in excess of the amount necessary to pay such principal and interest shall be distributed to the affected taxing districts in which the Revenue Allocation Area is located in the same manner and proportion as the most recent distribution to the affected taxing districts of the taxes on the taxable property located within the Revenue Allocation Area; and the powers granted to the Agency under Section 50-2909, Idaho Code, shall thereupon terminate.
- b. In determining the termination date, the Plan shall recognize that the Agency shall receive allocation of revenues in the calendar year following the last year of the revenue allocation provision described in the Plan.
- c. For the fiscal year that immediately predates the termination date, the Agency shall adopt and publish a budget specifically for the projected revenues and expenses of the Plan and make a determination as to whether the Revenue Allocation Area can be terminated before January 1 of the termination year pursuant to the terms of Section 50-2909(4), Idaho Code. In the event that the Agency determines that current tax year revenues are sufficient to cover all estimated expenses for the current year and all future years, by September 1, of the then-current year, the Agency shall adopt a resolution advising and notifying the City, the county auditor, and the State Tax Commission, recommending the adoption of an ordinance by the City for termination of the Revenue Allocation Area by December 31 of the current year and declaring a surplus to be distributed as described in Section 50-2909, Idaho Code, should a surplus be determined to exist. The Agency shall cause the ordinance to be filed with the office of the Recorder for Ada County and the Idaho State Tax Commission as provided in Section 63-215, Idaho Code.

As allowed by Idaho Code Section 50-2905(7), the Agency may retain assets or revenues generated from such assets as long as the Agency shall have resources other than revenue allocation funds to operate and manage such assets. The Agency may retain ownership of the several parking facilities which may be constructed in the Project Area, as parking revenues may be sufficient to provide the resources necessary for the Agency to retain those assets. Similarly,

the Agency may retain facilities which provide a lease income stream that will allow the Agency to meet debt service obligations, fully retire the facility debt, and provide for the continued operation and management of the facility.

For those assets which do not provide such resources or revenues, the Agency will likely convey such assets to the City, depending on the nature of the asset.

Upon termination of the Agency's revenue allocation authority to the extent the Agency owns or possesses any assets, the Agency shall dispose of any remaining assets by granting, conveying, or dedicating such assets to the City.

Section 900 PROCEDURE FOR AMENDMENT

The Urban Renewal Plan may be further modified at any time by the Agency provided that, if modified after disposition of real property in the Project Area, the modifications must be consented to by the developer or developers or his successor or successors of such real property whose interest is substantially affected by the proposed modification. Where the proposed modification will substantially change the Plan, the modifications must be approved by the City Council in the same manner as the original Plan. Substantial changes for the City Council approval purposes shall be regarded as revisions in project boundaries; land uses permitted, land acquisition, and other changes which would substantially modify the objectives of this Plan.

Section 1000 SEVERABILITY

If any one or more of the provisions contained in this Plan to be performed on the part of the Agency shall be declared by any court of competent jurisdiction to be contrary to law, then such provision or provisions shall be null and void, shall be deemed separable from the remaining provisions in this Plan, and shall in no way affect the validity of the other provisions of this Plan.

Section 1100 PERFORMANCE REVIEW

Under the Law, the Agency is required to file with the City, on or before March 31 of each year, a report of the Agency's activities for the proceeding calendar year, which report shall include a complete financial statement setting forth its assets, liabilities, income, and operating expenses as of the end of such calendar year.

2007 AMENDED
CENTRAL DISTRICT PLAN

ATTACHMENT NO. 3E: DEVELOPMENT
STRATEGY (JULY 1994)

Development Strategy

Boise Central District

Adopted February 1987
Second Amendment July 1994

CAPITAL CITY DEVELOPMENT CORPORATION
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I. BACKGROUND, PURPOSE, AND METHODOLOGY

In July, 1990, the Capital City Development Corporation ("CCDC") modified its adopted *Development Strategy* to adjust to a number of changes in the project area, e.g. completed projects and new development opportunities. The *Development Strategy* was originally prepared in April, 1986. It was intended to guide the CCDC in its implementation of the *Urban Renewal Plan, Boise Central District Urban Renewal Projects I and II, Idaho R-4 and R-5, and the Framework Master Plan*. The latter document was created as the design context against which development activity could be measured.

Nearly four years later, the CCDC has determined to once again revisit the *Development Strategy* for the purpose of reconciling development expectations with changed circumstances. These changes include:

- Sale and conversion of the Mode Building to a mixed use development;
- Initiation of construction of an 11-story, mixed-use development on Parcel 3-5 with a heavy residential component;
- Recent interest in vertical expansion of the Capitol Terrace retail building;
- Potential development of a mixed-use, high rise project on the Eastman site with a heavy residential component;
- Potential inclusion of a 40,000 sq. ft. event center with the proposed hotel project on Block 22; and
- Interest in a more flexible development approach to the Union Block Building.

This revision of the *Development Strategy* addresses the impact of completed projects and development opportunities and attempts to refine CCDC strategies for remaining developable sites. Both the *Framework Master Plan* and the *Development Strategy* are planning documents and should be considered dynamic and flexible. Both are recognized in the *Urban Renewal Plan ("Plan")* as such and subject to modification by the CCDC without *Plan* amendment.

The format for this modification alters very little from the 1990 revision. In place of Phase I and Phase II activities, the terms "completed development activities" and "additional development activities" have been substituted, respectively. It should be noted that assumed land uses and square footages for "additional development activities" are estimated for parking planning purposes only and do not necessarily identify CCDC policy for these specific sites. These sections (II.B. and III.B.) are followed by narrative statements that more accurately reflect CCDC development policy (II.C. and III.C.).

Additionally, the CCDC is currently engaged in the necessary planning for a possible new or expanded redevelopment area in the River Street and Myrtle Street districts, directly south of the current project. Should this eventuality occur, some revision of the southern boundary of the current redevelopment area may be appropriate with corresponding changes to the *Urban Renewal Plan* and *Development Strategy*.

II. LAND USE STRATEGY NORTH OF MAIN STREET

The general land use policies remain unchanged north of Main Street — historic renovation of structures that meet physical and economic feasibility requirements with in-fill development designed to complement the historic buildings and maximize retail opportunities. Retail and related uses are to remain a primary emphasis along Eighth and Idaho Streets. New parking structures, located mid-block on Blocks 2 and 3, serve the parking needs of existing and new retail, office, and residential uses north of Main, with the exception of long-term parking for the Key Financial Center and the Idaho Building, which have separate parking facilities. The garage facilities are designed to be user friendly and retain retail opportunities at grade level.

A block by block description of development activity north of Main is provided below, identifying completed development activities and anticipated development activity. To ensure consistency with the 1987 *Development Strategy* and the 1990 revision, the south one-half of Block 45 has been included since the CCDC's Downtown Public Parking System serves The Bon Marche department store. All square footages are gross building areas.

For convenience, blocks have been renamed as follows:

Block 45 (south half)	Bon Block
Block 44	Mode Block
Block 43	Fidelity Block
Block 2	Eastman Block
Block 3	Egyptian Block

A. COMPLETED DEVELOPMENT ACTIVITIES (NORTH OF MAIN)

I. Bon Block

- A. Continued operation of The Bon Marche department store
 - 79,000 sq. ft. retail (existing)
 - Street reconstruction on Idaho Street

II. Mode Block

- A. Major renovation of the Mode building
 - 29,000 sq. ft. retail (existing)
 - 20,000 sq. ft. retail (removed)
 - 12,000 sq. ft. office (new)
- B. Cosmetic improvements on remaining Block 44 buildings
 - 48,000 sq. ft. retail (existing)
- C. Street reconstruction around entire block
- D. Street improvements of Eighth and Idaho Streets

III. Fidelity Block

- A. Historic renovation of the Idaho Building, Life Insurance Building, and public open space
 - 13,000 sq. ft. retail (new)
 - 11,000 sq. ft. office (removed)
 - 7,000 sq. ft. office (new)
 - 29,000 sq. ft. residential; 49 du (new)
 - 60 parking stalls (new)
- B. Historic renovation of the Fidelity Building
 - 8,000 sq. ft. retail (existing)
 - 7,000 sq. ft. office (new)
- C. Major renovation of the Key Financial Center Building (700 Idaho Tower)
 - 150,000 sq. ft. office (existing)
 - 141 parking stalls (existing)
- D. Street reconstruction around entire block
- E. Streetscape improvements around entire block

IV. Eastman Block

- A. Historic renovation of the Alexander Building
 - 6,000 sq. ft. retail (new)
 - 8,000 sq. ft. office (new)
- B. Historic renovation of the Broadbent Building
 - 5,000 sq. ft. retail (existing)
 - 6,000 sq. ft. office (existing)
- C. Continued operation of the Simplot Building
 - 8,000 sq. ft. retail (existing)
 - 24,000 sq. ft. office (existing)
- D. Street reconstruction around entire block
- E. Streetscape improvements around entire block
- F. Construction of Eastman parking garage
 - 404 stalls
 - 8,000 sq. ft. retail (new)
 - 15,000 sq. ft. retail (removed)
 - 6,000 sq. ft. office (removed)

V. Egyptian Block

- A. Construction of Capitol Terrace retail building including at-grade retail in adjacent garage
 - 63,000 sq. ft. retail (new)
 - 17,000 sq. ft. retail (removed)
- B. Continued operation of the Egyptian Theatre
- C. Construction of Capitol Terrace parking garage
 - 496 total stalls

- D. Construction of U. S. Bank Capitol Plaza building on parcel 3-5
 - 16,000 sq. ft. retail (new)
 - 51,000 sq. ft. office (new)
 - 52,000 sq. ft. residential; 32 du (new)
- E. Street reconstruction around entire block.
- F. Streetscape improvements around entire block

TABLE 1 - COMPLETED DEVELOPMENT ACTIVITY NORTH OF MAIN STREET

LOCATION	RETAIL GSF			OFFICE GSF			RESIDENTIAL DU		
	EXISTING	NET NEW	TOTAL	EXISTING	NET NEW	TOTAL	EXISTING	NET NEW	TOTAL
Bon Block	79,000	0	79,000	0	0	0	0	0	0
Mode Block	96,000	(20,000)	76,000	0	12,000	12,000	0	0	0
Fidelity Block	23,000	(2,000)	21,000	150,000	3,000	153,000	0	49 du	49 du
Eastman Block	28,000	(1,000)	27,000	30,000	2,000	32,000	0	0	0
Egyptian Block	17,000	62,000	79,000	0	51,000	51,000	0	32 du	32 du
TOTAL	243,000	39,000	282,000	180,000	68,000	248,000	0	81 du	81 du

B. ADDITIONAL DEVELOPMENT ACTIVITY (NORTH OF MAIN)

- I. **Bon Block**
 - A. No further development activity assumed
- II. **Mode Block**
 - A. Block 44; renovation of three levels of McCarty Building; removal of Standard Building and in-fill with two-level structure
 - 6,000 sq. ft. retail (new)
 - 24,000 sq. ft. office (new)
 - B. Streetscape improvements on Bannock and Ninth Streets
- III. **Fidelity Block**
 - A. Historic renovation of the Union Block Building
 - 15,000 sq. ft. retail (new)
 - 15,000 sq. ft. office (new)
- IV. **Eastman Block**
 - A. Development of mixed use project on old Eastman Building site and southerly 60 feet of Boise City National Bank site
 - 25,000 sq. ft. retail (new)
 - 3,000 sq. ft. retail (removed)
 - 50,000 sq. ft. office (new)
 - 9,000 sq. ft. office (removed)
 - 50,000 sq. ft. residential; 75 du (new)
 - 75 parking stalls (new)
 - B. Historic renovation of the Boise City National Bank (Simplor) Building
 - 5,000 sq. ft. retail (existing)
 - 15,000 sq. ft. office (existing)
- V. **Egyptian Block**
 - A. Vertical expansion atop Capitol Terrace retail building
 - 60,000 sq. ft. office (new)

TABLE 2 - ADDITIONAL DEVELOPMENT ACTIVITY ANTICIPATED NORTH OF MAIN STREET

LOCATION	RETAIL GSF			OFFICE GSF			RESIDENTIAL DU		
	EXISTING	NET NEW	TOTAL	EXISTING	NET NEW	TOTAL	EXISTING	NET NEW	TOTAL
Bon Block	79,000	0	79,000	0	0	0	0	0	0
Mode Block	76,000	6,000	82,000	12,000	24,000	36,000	0	0	0
Fidelity Block	21,000	15,000	36,000	153,000	15,000	168,000	49 du	0	49 du
Eastman Block	27,000	22,000	49,000	32,000	41,000	73,000	0	75 du	75 du
Egyptian Block	79,000	0	79,000	51,000	60,000	111,000	32 du	0	32 du
TOTAL	282,000	43,000	325,000	248,000	140,000	388,000	81 du	75 du	156 du

The projected net increase in additional development activity is 43,000 sq. ft. for retail, 140,000 sq. ft. for office, and 75 residential dwelling units. These assumptions are primarily based upon developer proposals. They include renovation of the McCarty Building, in-fill development on the Standard Building site, historic renovation of the Union Block building, a major mixed use project on the Eastman site, renovation of the Simplot Building, and vertical expansion atop Capitol Terrace.

C. CCDC POLICY FOR REMAINING DEVELOPMENT OPPORTUNITIES **(NORTH OF MAIN)**

The following parcel-by-parcel discussion attempts to delineate CCDC development strategies for each of the remaining sites north of Main Street. It should be understood that the primary purpose in this exercise is to identify the minimum development potential for each site to ensure that urban densities can be created and street activity levels can be enhanced as envisioned in the *Framework Master Plan*. As previously mentioned, these minimum densities may differ from the projections used above to calculate parking requirements.

Major Project on Mode Block

It continues to be a CCDC policy to accommodate a major development activity north of Main (e.g., major department store) that would require a full block footprint. The Mode Block presents the fewest physical impediments to such a development, since it contains no structures on the National Register of Historic Places and no significant new construction is anticipated with the current development program. For that reason, both Mode Block Disposition and Development Agreements (DDAs) include specific provisions for reacquisition by the CCDC. However, it should be noted that the Janss Corporation's continuing capital investment on the block and the recent decision to substantially renovate the Mode Building for a second time renders this possibility less and less likely.

Urban Densities on Idaho Street

Any proposed new construction on Idaho Street must be at least two levels in height. This objective responds to a developer proposal to remove existing structures on the Mode Block and replace them with single level retail. Such an action is deemed by the CCDC as an inappropriate development response to this site that does not adequately consider long-term downtown land use densities and the need to concentrate urban activity.

Historic Renovation of the Union Block Building

Retention of the Union Block Building and its return to an economically viable position in the downtown urban fabric remains a CCDC objective. This position is based upon the structure's unique facade, second level loft area, and the community identity the building enjoys. However, the CCDC recognizes that the building's poor structural condition and asbestos removal problem renders its renovation potential difficult in the current market and that its current vacant status creates a vacuum in street-level activity on Idaho Street. In order to move the project forward, CCDC will entertain proposals for redevelopment with less than full historic renovation to determine if an alternative approach may be feasible. Should the CCDC accept a proposal, however, full compliance with the adopted Memorandum of Understanding on historic preservation would be required.

Urban Density and Land Use on the Eastman Site

The CCDC has identified the site of the Eastman Building, destroyed by fire in January 1987, as a key location in the redevelopment of downtown Boise. Recent developer interest in the site reinforces this view. As such, the CCDC desires the maximum development possible, subject to *Design Guidelines* requirements for compatibility with adjacent structures. At a minimum, the CCDC strongly encourages a building mass of at least six levels of new construction, which equates to the height of the original Eastman Building. Such a structure would take full advantage of all levels of the adjacent Eastman parking garage and screen the unsightly south facade of the Boise City National Bank (Simplot) Building. Further, the site's location on the Eighth Street retail corridor demands retail use at-grade. Above grade, the project could include any combination of retail, office, or residential use with the possible inclusion of parking decks. The CCDC recognizes that the actual redevelopment potential depends on various market factors and that a reconsideration of this density objective may be necessary if warranted by market conditions.

Increased Size of the Eastman Site

The CCDC is encouraging developer use of an increased foot print on the Eastman site. On the north, the alley has been vacated and the southerly wing of the Boise City National Bank (Simplot) Building may be removed in a manner to allow extension of the building footprint approximately 42 feet to the north. Such an extension will have to consider alley utility easements and appropriate historic effects on the Boise City National Bank (Simplot) Building. Additionally, street reconstruction has provided for another ten foot extension east into the old Eighth Street right of way.

Bon Lot Development

In 1978, this property was sold by the Agency to First Security Bank for construction of a new office building, adjacent to the then newly constructed First Security parking garage. The project was never initiated and the current owner is interested in selling the property. The CCDC still retains the right to enforce the development agreement in the future. The CCDC would like to see the property developed as an office or mixed use project with ground floor retail. It is assumed that the adjacent First Security garage would serve any development on the site. Since this garage is not included as a system facility, the proposed project was not assumed in Sections II.B. or IV.A. for parking planning purposes.

III. LAND USE STRATEGY SOUTH OF MAIN STREET

South of Main Street, the historic urban fabric was eliminated in the 1970s with the demolition of all structures; the vacation of Eighth and Grove Streets; and the relocation of major utilities. Within the four blocks of substantial development activity (8, 9, 21, and 22), the CCDC's design team determined that a four quadrant super-block centered around a central plaza would best provide the optimum land use opportunities for the area. The West One Plaza office tower on Block 8 serves to set the pattern for larger-scale contemporary development. The original right of way corridors were reinstated with pedestrian walkways that radiate from the central plaza. It should be noted that the *Design Guidelines*, established in the *Framework Master Plan* to ensure a truly urban environment, also apply south of Main. Therefore, development activity should energize street level activity.

In addition to the four block quadrant, the south of Main area also includes Block 10 (One Capital Center), Block 20 (Statehouse Inn), and the north half of Block 1 of the Davis Addition south of Front Street, since they contain major land use constituents served by the Downtown Public Parking System. The Grove Street garage on Block 20 also serves uses within the four-block quadrant, as does the Front Street surface lot on Block 1, Davis Addition. For convenience, blocks have been labeled as follows:

Block 10	One Capital Center Block
Block 9	First Interstate Center (FIC) Block
Block 8	West One Block
Block 20	Statehouse Inn Block
Block 21	Convention Center Block
Block 22	Hotel Block
Block 1 Davis Add. (north half)	Foster Block

A. COMPLETED DEVELOPMENT ACTIVITIES (SOUTH OF MAIN)

I. One Capital Center Block

- A. Continued operation of One Capital Center office tower
 - 220,000 sq. ft. office (existing)
 - 70 surface parking stalls
- B. Reconstruction of Ninth Street

II. FIC Block

- A. Construction of FIC office tower and Grove Court Plaza
 - 174,000 sq. ft. office (new)
 - 10,000 sq. ft. retail (new)
- B. Construction of Ninth Street parking garage
 - 199 total stalls
- C. Construction of The Grove, and North and West Grove extensions
- D. Street reconstruction on Ninth and Main Streets
- E. Streetscape improvements on Ninth and Main Streets and installation of North Grove extension

III. West One Block

- A. Continued operation of West One Plaza
 - 266,000 sq. ft. office (existing)
 - 240 parking stalls (existing)
- B. Street reconstruction on Main Street and Capitol Boulevard
- C. Streetscape improvements on Main Street and North Grove extension

IV. Statehouse Inn Block

- A. Continued operation of Statehouse Inn hotel and expansion of restaurant facilities
 - 85 rooms (existing)
 - 3,000 sq. ft. retail (existing)
 - 4,000 sq. ft. retail (new)
- B. Continued operation of Grove Street garage
 - 546 stalls (existing)
- C. Street reconstruction on Front and Ninth Streets

V. Convention Center Block

- A. Construction of Boise Centre on the Grove
 - 86,000 sq. ft. convention center (new)
 - 1,000 sq. ft. retail (new)
- B. Construction of South Grove extension and Front Street pedestrian crossing
- C. Street reconstruction and streetscape improvements on Ninth and Front Streets

VI. Hotel Block

- A. Street reconstruction on Front Street and Capitol Boulevard
- B. Installation of South Grove extension and Front Street pedestrian crossing

VII. Foster Block

- A. Acquisition of northerly portion of block for Boise Centre expansion opportunity
 - 39,000 sq. ft. parcel
 - 85 stalls temporary parking
 - 3,000 sq. ft. retail (existing)
- B. Street reconstruction of Front Street and Front Street pedestrian crossing

TABLE 3 - COMPLETED DEVELOPMENT ACTIVITY SOUTH OF MAIN STREET

LOCATION	RETAIL GSF			OFFICE GSF			HOTEL/CONVENTION FACILITIES GSF		
	EXISTING	NET NEW	TOTAL	EXISTING	NET NEW	TOTAL	EXISTING	NET NEW	TOTAL
One Capital Center Block	0	0	0	220,000	0	220,000	0	0	0
FIC Block	0	10,000	10,000	0	174,000	174,000	0	0	0
West One Block	0	0	0	266,000	0	266,000	0	0	0
Statehouse Inn Block	3,000	4,000	7,000	0	0	0	85 rms/3,000	0	85 rms/3,000
Convention Center Block	0	1,000	1,000	0	0	0	0	86,000	86,000
Hotel Block	0	0	0	0	0	0	0	0	0
Foster Block	3,000	0	3,000	0	0	0			
TOTAL	6,000	15,000	21,000	486,000	174,000	660,000	85 rms/3,000	86,000	85 rms/89,000

B. ADDITIONAL DEVELOPMENT ACTIVITY (SOUTH OF MAIN)

- I. **One Capital Center Block**
 - A. No further development activity assumed
- II. **HIC Block**
 - A. No further development activity assumed
- III. **West One Block**
 - A. Parcel E retail development
 - 10,000 sq. ft. retail (new)
 - B. Streetscape installation on Capitol Boulevard
- IV. **Statehouse Inn Block**
 - A. Expansion of hotel project (Statehouse Inn)
 - 11,000 sq. ft. 22 rooms (new)
- V. **Convention Center Block**
 - A. Expansion of Boise Centre on the Grove
 - 11,000 sq. ft. addition (new)
- VI. **Hotel Block**
 - A. Construction of full service hotel and event center
 - 125,000 sq. ft. 250 rooms/suites (new)
 - 26,000 sq. ft. meeting room (new)
 - 5,000 seat arena or 25,000 sq. ft. exhibition hall (new)
 - 16,000 sq. ft. retail (new)
 - B. Construction of hotel parking structure
 - 200 total stalls (new)
 - C. Streetscape improvements on Front Street and Capitol Boulevard
 - D. East Grove walkway extension to Capitol Boulevard
- VII. **Foster Block**
 - A. Construction of additional public parking structure
 - Size undetermined
 - 3,000 sq. ft. retail (removed)
 - 5,000 sq. ft. retail (new)

TABLE 4 - ADDITIONAL DEVELOPMENT ACTIVITY ANTICIPATED SOUTH OF MAIN STREET

LOCATION	RETAIL GSF			OFFICE GSF			HOTEL ROOMS/ CONVENTION FACILITIES GSF		
	EXISTING	NET NEW	TOTAL	EXISTING	NET NEW	TOTAL	EXISTING	NET NEW	TOTAL
One Capital Center Block	0	0	0	220,000	0	220,000	0	0	0
FIC Block	10,000	0	10,000	174,000	0	174,000	0	0	0
West One Block	0	10,000	10,000	266,000	0	266,000	0	0	0
Statehouse Inn Block	7,000	0	7,000	0	0	0	85 rms/3,000	22 rms	107 rms/3,000
Convention Center Block	1,000	0	1,000	0	0	0	86,000	11,000	97,000
Hotel Block	0	16,000	16,000	0	0	0	0	250 rms/51,000*	250 rms/51,000*
Foster Block	3,000	2,000	5,000	0	0	0	0	0	0
TOTAL	21,000	28,000	49,000	660,000	0	660,000	85 rms/89,000	272 rms/82,000	357 rms/151,000

*Converts to 5,000 seat arena

C. CCDC POLICY FOR REMAINING DEVELOPMENT OPPORTUNITIES (SOUTH OF MAIN)

South of Main, several development opportunities merit special CCDC attention. The following descriptions seek to identify CCDC land use strategies and minimum development standards for the sites.

Retail Development on Parcel E

By its nature, a surface parking lot does not meet the test of urban density. It does not provide the sense of enclosure necessary to enhance pedestrian interaction between the street and the adjacent land use; nor is it an efficient or economical method of accommodating parking in an urban environment. For these reasons, the *Framework Master Plan* calls for the construction of various above-grade and below-grade structures to provide for the parking needs of the project area. Parcel E is a surface parking lot located in a key position in the project area. Clearly a retail or service retail structure on the site would better implement several CCDC goals: street-edge definition of the intersection of Eighth and Main Streets; retail emphasis on the Eighth Street retail corridor complementary to the adjacent Grove Court Plaza; and street-edge definition of the northeast quadrant of The Grove. The CCDC acknowledges, however, that the surface lot is owned by a private entity (West One Bank) and that the current customer parking must be accommodated elsewhere should the site be more intensively developed. The CCDC will continue to strive to achieve the objectives of the *Framework Master Plan* and work with West One to create a higher urban density for the site.

Block 22 Development

The CCDC has identified the appropriate Block 22 development to be a high quality, full service, convention center headquarters hotel with 250 or more rooms/suites and sufficient meeting room/ballroom space to complement convention, meeting, and exhibition activities at the adjacent Boise Centre on the Grove. The CCDC further encourages additional uses on the site to maximize development density and increase the ability of the downtown core to attract customers and visitors. Such additional uses include, but are not limited to, any and all uses allowed or conditionally allowed under the C-5 zoning classification of the Boise City Zoning Ordinance. The actual use will be depend on various market factors and the ability to achieve objectives contained within the *Urban Renewal Plan* and *Framework Master Plan*. The CCDC reaffirms its long-held position that a full service, first class hotel adjacent to the convention center is paramount to assure continued viability of the convention center and to create the necessary activity to assist retail development in the project area. With regard to design, special attention should be paid to the development's interface with The Grove and the South Grove extension to ensure that a pedestrian intensive edge is created.

Convention Center Expansion

The DDA with the Greater Boise Auditorium District ("GBAD") acknowledged the potential for Boise Centre expansion and identified three options for it to occur. A single expansion scenario has been assumed for parking planning purposes which draws upon components of the defined options:

- An 11,000 sq. ft. additional meeting room space level atop the southerly portion of the existing facility on Block 21; and
- A 33,000 sq. ft. exhibition hall south of Front Street on the railroad property, with a 5,000 sq. ft. retail footprint along the Eighth Street frontage.

With the proposed event center project on the Hotel Block, it may be possible to fully accommodate future exhibition hall needs, freeing up additional property on the Foster Block for other purposes. This scenario has been assumed for the parking calculations in Section IV, however, the ultimate selection of an appropriate Boise Centre expansion option will be determined by GBAD.

**TABLE 5 - COMPLETED AND ADDITIONAL DEVELOPMENT ACTIVITY
ANTICIPATED NORTH AND SOUTH OF MAIN STREET**

	RETAIL GSF	OFFICE GSF	RESIDENTIAL DU	CONVENTION GSF	HOTEL RM
NORTH OF MAIN					
Boni Block	79,000	0	0	0	0
Mode Block	82,000	36,000	0	0	0
Fidelity Block	36,000	168,000	49	0	0
Eastman Block	49,000	73,000	75	0	0
Egyptian Block	79,000	111,000	32	0	0
SUBTOTAL	325,000	388,000	156	0	0
SOUTH OF MAIN					
One Capital Center Block	0	220,000	0	0	0
FIC Block	10,000	174,000	0	0	0
West One Block	10,000	266,000	0	0	0
Statehouse Inn Block	7,000	0	0	3,000	107
Convention Center Block	1,000	0	0	97,000	0
Hotel Block	16,000	0	0	51,000*	250
Foster Block	5,000	0	0	0	0
SUBTOTAL	49,000	660,000	0	151,000	357
TOTAL	331,000	1,062,000	156	151,000	357

*Converts to 5,000 seat arena

IV. PARKING NEEDS AND RECOMMENDED SUPPLY

This section calculates the estimated parking demand based upon the existing and projected land use assumptions of Sections II and III. It further identifies a recommended parking program to meet the projected demand both north and south of Main Street.

A. NORTH OF MAIN STREET

Table 5 identifies the block by block projections of land use for the five blocks north of Main Street. The existing occupied space includes 282,000 sq. ft. of retail, 248,000 sq. ft. of office, and 81 residential dwelling units. With the anticipated projects, projected land use north of Main is intensified to 325,000 sq. ft. of retail, 388,000 square feet of office, and 156 residential dwelling units. As identified in Section II, these increases are based upon an assumed renovation of the Simplot, McCarty, and Union Block buildings, a new mixed use project on the Eastman Site, and vertical expansion atop Capitol Terrace. They do not assume a major development on the Mode Block, nor development of the Price lot.

Table 6 calculates the land use assumptions to factors of parking demand to determine required parking. This number is then reduced by the existing and anticipated supply to identify net demand.

The results of the calculation indicate that supply and demand totals are very close north of Main, assuming full development adjusted by an eighty-five percent (85%) occupancy rate. (Obviously a great deal of interchange takes place between the land uses and parking facilities within the north of Main area, and the land uses and parking facilities on adjacent blocks. For purposed of this planning exercise, this exchange is assumed to be equal.)

B. SOUTH OF MAIN

Table 7 identifies the land use assumptions and projected parking supply and demand on the seven block area south of Main Street. South of Main parking requirements assume additional development of several projects that increase the demand:

- Increase in rooms at Statehouse Inn
- Development of retail structure on West One site
- Convention center expansion north and south of Front Street; and
- A new hotel/event center facility on Block 22

Table 7 identifies an increased demand of 350 spaces from anticipated activities; yet the parking supply is reduced by 122 spaces due in large part to the loss of the Block 22 surface lot. As a result, the anticipated net demand is calculated at 307 spaces over supply. It must be acknowledged, however, that this figure assumes that all described development occurs and does not consider the space-saving advantages of shared parking. Nevertheless, the calculation points

out the need for an additional parking structure south of Main when further development occurs. An appropriate location has not been determined at this time, but consideration should be given to the overflow parking demands within the south of Main area, the parking needs of the 8th Street Marketplace, and the future parking demand associated with potential development along the Broadway-Chinden corridor. Additional consideration should be given to an interim parking program that will offset the loss of Block 22 parking before a new garage can be built. Vacant lots along the Broadway-Chinden corridor should be considered for this purpose.

TABLE 6 - PARKING SUPPLY AND DEMAND NORTH OF MAIN STREET

EXISTING DEMAND		SPACES
Retail	282,000 sq. ft. x 2.7 spaces per 1,000 sq. ft.	761
Office	248,000 sq. ft. x 2.0 spaces per 1,000 sq. ft.	496
Residential	81 units x 1.0 spaces per unit	81
TOTAL DEMAND		1,338
ADJUSTED DEMAND	1,338 spaces x .85 occupancy	1,137
EXISTING SUPPLY		
On-street and Surface Lots		134
Bannock Garage		223
Capitol Terrace Garage		496
Idaho Building Garage		60
Key Financial Center Garage		141
Eastman Garage		404
TOTAL SUPPLY		1,317
EXISTING ADJUSTED NET DEMAND		
1,137 spaces - 1,317 spaces		(180)

EXISTING AND ANTICIPATED DEMAND		SPACES
Retail	325,000 sq. ft. x 2.7 spaces per 1,000 sq. ft.	878
Office	388,000 sq. ft. x 2.0 spaces per 1,000 sq. ft.	776
Residential	156 units x 1.0 spaces per unit	156
TOTAL DEMAND		1,810
ADJUSTED DEMAND	1,810 spaces x .85 occupancy	1,539
EXISTING AND ANTICIPATED SUPPLY		
On-street and Surface Lots		134
Bannock Garage		223
Capitol Terrace Garage		496
Idaho Building Garage		60
Key Financial Center Garage		141
Eastman Garage		404
Eastman Site		75
TOTAL SUPPLY		1,533
EXISTING AND ANTICIPATED ADJUSTED NET DEMAND		
1,539 spaces - 1,533 spaces		6

TABLE 7 - PARKING SUPPLY AND DEMAND SOUTH OF MAIN STREET


EXISTING DEMAND		SPACES
Retail	21,000 sq. ft. x 2.7 spaces per 1,000 sq. ft.	57
Office	660,000 sq. ft. x 2.0 spaces per 1,000 sq. ft.	1,320
Convention Center	86,000 sq. ft. x 1.0 spaces per 500 sq. ft.	172
Hotel	85 rooms x 1.0 spaces per unit	85
TOTAL DEMAND		1,634
ADJUSTED DEMAND	1,634 spaces x .85 occupancy	1,389
EXISTING SUPPLY		
On-street and Surface Lots		191
Grove Street Garage		546
Ninth Street Garage		199
West One Garage		240
Block 22 Lot		220
Front Street Lot		85
TOTAL SUPPLY		1,481
EXISTING ADJUSTED NET DEMAND		
1,389 spaces - 1,481 spaces		(92)

EXISTING AND ANTICIPATED DEMAND		SPACES
Retail	49,000 sq. ft. x 2.7 spaces per 1,000 sq. ft.	132
Office	660,000 sq. ft. x 2.0 spaces per 1,000 sq. ft.	1,320
Convention Center	151,000 sq. ft. x 1.0 spaces per 500 sq. ft.	302
Hotel	357 rooms x 1.0 spaces per unit	357
TOTAL DEMAND		2,111
ADJUSTED DEMAND	2,111 spaces x .85 occupancy	1,794
EXISTING AND ANTICIPATED SUPPLY		
On-street and Surface Lots		89
Grove Street Garage		546
Ninth Street Garage		199
West One Garage		240
Hotel Garage		200
Front Street Lot		85
TOTAL SUPPLY		1,359
EXISTING AND ANTICIPATED ADJUSTED NET DEMAND		
1,794 spaces - 1,359 spaces		435

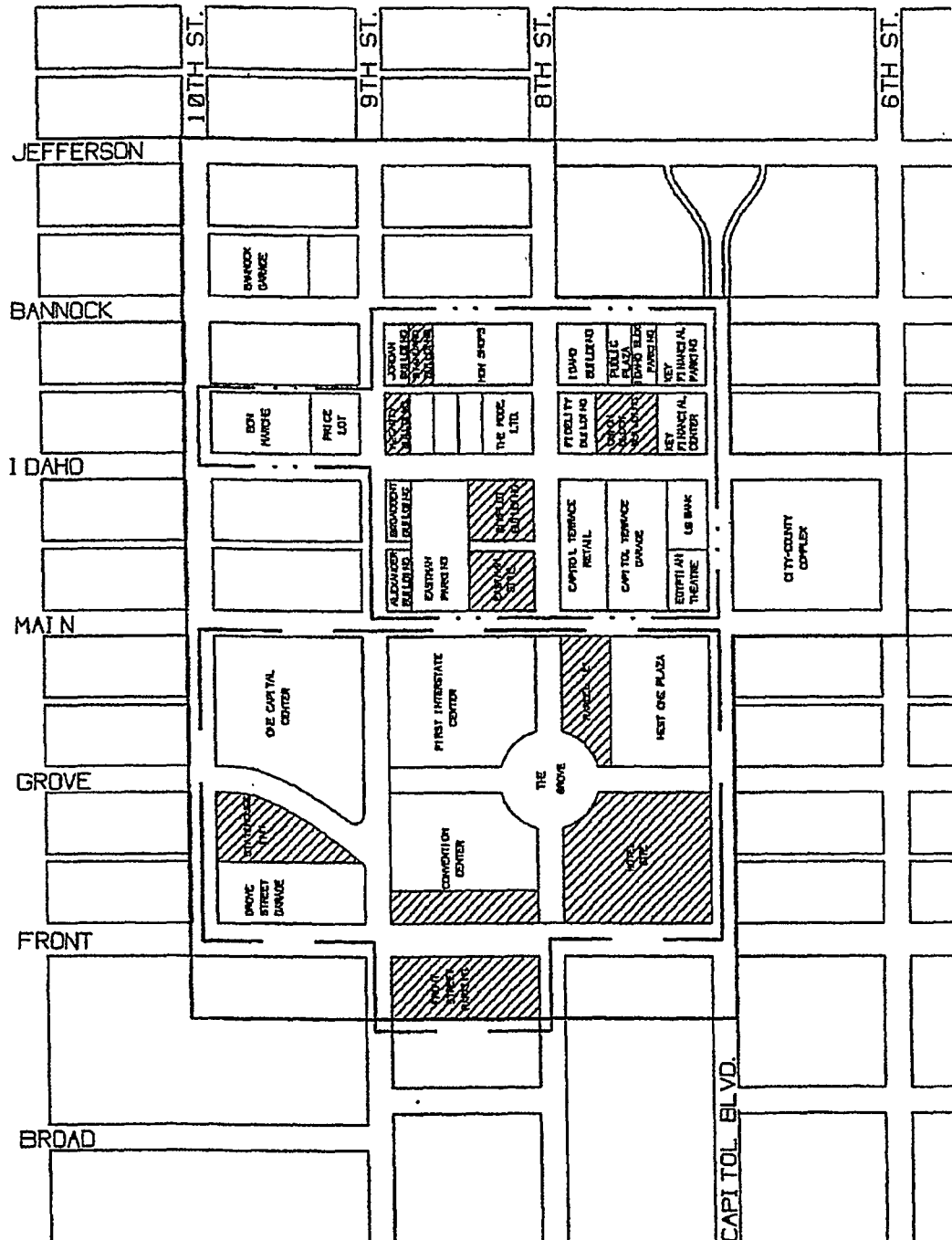
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**Development Strategy - 22**





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**Development Strategy - 23**

URBAN RENEWAL AREA _____

NORTH OF MAIN _____

SOUTH OF MAIN _____

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Scrine
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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF:

GREATER BOISE AUDITORIUM
DISTRICT,

PETITIONER.

)
) Case No. CV-OT-2014-23695
)
) REPLY MEMORANDUM TO
) RESPONDENT'S BRIEF IN OPPOSITION
) TO MEMORANDUM IN SUPPORT OF
) PETITION FOR JUDICIAL
) CONFIRMATION
)
_____)

REPLY MEMORANDUM TO RESPONDENT'S BRIEF IN OPPOSITION TO MEMORANDUM IN
SUPPORT OF PETITION FOR JUDICIAL CONFIRMATION

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AFFIDAVITS IN SUPPORT

Filed Herewith:

1. Supplemental Affidavit of Patrick Rice in Support of Petition for Judicial Confirmation
2. Supplemental Affidavit of John Brunelle in Support of Petition for Judicial Confirmation

Filed January 26, 2015:

3. Affidavit of Posting, Mailing and Publishing of Notice of Public Hearing and of Posting and Publishing of Notice of Filing Petition for Judicial Confirmation and Notice of Hearing Thereon
4. Affidavit of Patrick Rice in Support of Petition for Judicial Confirmation
5. Affidavit of John Brunelle in Support of Petition for Judicial Confirmation
6. Affidavit of David Wali in Support of Petition for Judicial Confirmation
7. Affidavit of Linda Armstrong, as a Representative of Wells Fargo Bank, N.A. Re: Petition for Judicial Confirmation

Petitioner, Greater Boise Auditorium District (the “District”), submits this Memorandum in Reply to *Respondent’s Brief in Opposition to Memorandum in Support of Petition for Judicial Confirmation* filed on February 13, 2015 (the “*Response*”). This Reply Memorandum is supported by the Affidavits listed above. Unless otherwise defined, capitalized terms shall have the same meaning as set forth in Petitioner’s *Memorandum in Support of Petition for Judicial Confirmation* (the “*Memorandum in Support*”) previously filed herein.

I. ARGUMENT

A. Respondent misconstrues and mischaracterizes the issues before the Court.

Throughout his *Response*, Respondent repeatedly references the purported “interrelated and interdependent” nature of the Project Documents. See *Response*, p. 4, 5, 6, 11, 12, & 15. Respondent’s contentions in this regard are fundamentally incorrect. As an initial matter, Respondent confuses his terms. The “Project” referred to § 1.5 and defined in § 2 of the Gardner MDA refers to the construction of both the Clearwater Building and the Centre Building as well as convention center facilities in both buildings. *Response*, Exhibit 1, Gardner MDA §§ 1.1.1, 1.4, 1.5 & 2. Thus, the term is much broader, and significantly distinct from, the “Financed Project” term defined in the Development Agreement and Lease Agreement which relates only to financing the purchase of certain convention center facilities located in the Centre Building. Similarly, the Clearwater “Lease Agreement” and “Option to Purchase” included within the definition of the “Project Documents” relate to the “Meeting Room Facilities” to be built in the Clearwater Building, not the convention center facilities in the Centre Building which equate to the Financed Project. The “Project Documents” do not include the Lease Agreement for the Financed Project that is the subject of this judicial confirmation action. The language cited by Respondent in § 2.5 of the Gardner MDA that “[t]he Project Documents are intended to be an integral whole and shall be interpreted as internally consistent” has absolutely nothing to do with

the financing and the Lease Agreement now before the Court. Respondent's confusion in this regard leads him to the faulty conclusion that "the Lease [Agreement] must be construed as part of the whole Project Documentation in conjunction with the other supporting documents involved in the Financed Project pursuant to the MDA." *Response*, p. 11.

Contrary to the assertions of Respondent, the Gardner MDA stands apart from the Development Agreement and Lease Agreement. In fact, the only connection between the documents is the recognition in the Gardner MDA that the District has the right to assign to the Agency the District's right to purchase the Centre Facilities. *Response*, Exhibit 1, Gardner MDA § 2.2. Simply stated, the Gardner MDA recognizes and permits the financing with the Agency, but it is not tied to it. Rather, the Gardner MDA sets forth a separate purchase transaction, irrespective of financing. If the Court confirms the constitutionality of the Lease Agreement as requested by Petitioner, the District will move forward with the financing pursuant to the Development Agreement and the Lease Agreement. In contrast, if judicial confirmation is denied, the Lease Agreement will not be executed, the financing will not take place and the District will continue to move forward with the direct purchase of the Centre Facilities pursuant to the Gardner MDA. The respective treatment and allocation of the District's cash deposits under § 3.1.1 of the Gardner MDA reflects and supports this dichotomy. By tying the Gardner MDA to the financing documents, Respondent has erroneously connected two transactions that are in fact separate.

This reality becomes readily apparent in Respondent's discussion of the Joint Obligations of the District and the Developer under § 3.3.2 of the Gardner MDA. Again, Respondent incorrectly attempts to tie the provisions of the Gardner MDA to the District's obligations under the Lease Agreement. In so doing, Respondent fails to identify that the "Lender" referred to § 3.3.2 of the Gardner MDA is the construction lender(s) to the Developer. It logically follows

that the construction lender is entitled to “a security interest in the Property, the Project and the Buildings.” *Response*, Exhibit 1, Gardner MDA §§ 3.2.2. Thus, the provisions of § 3.3.2 of the Gardner MDA are simply a recognition of construction loan priority until the time of purchase. Once the property is purchased, the Financed Project is released from the construction loan. Accordingly, once the Financed Project is purchased by the Agency, the construction lender’s priority security interest goes away and Wells Fargo, as the Note holder, will acquire a first lien position as required by the Term Sheet. Moreover, the construction lender’s ability to impose additional obligations under § 3.3.2 of the Gardner MDA applies to the “Project Documents” which, as discussed above, do not include the Lease Agreement. For the foregoing reasons, § 3.3.2 of the Gardner MDA does not create an “indefinite, open-ended liability” as claimed by Respondent. See *Response*, p. 14.

B. The Lease Agreement does not constitute a prohibited indebtedness or liability under Article VIII, § 3 of the Idaho Constitution.

1. Respondent’s reliance on *Feil v. City of Coeur d’Alene* is misplaced.

Respondent spends much of his *Response*, focusing on the “Feil Standard,” a term of his own invention and a reference to the decision of the Idaho Supreme Court in *Feil v. City of Coeur d’Alene*, 23 Idaho 32, 129 P. 643, 648-649 (1912). Specifically, Respondent is referring to the *Feil* Court’s “narrow interpretation and strict application of Article VIII, § 3 of the Idaho Constitution.” *Response*, p. 7. Importantly, the Idaho Supreme Court has not, in *Feil* or in any other decision, addressed whether an annual appropriation lease is a debt or liability under Article VIII, § 3. Rather, the Court’s holding in *Feil* is a rejection of the “special fund” doctrine, which has been summarized by the Idaho Supreme Court as a holding that “a municipality does not contract indebtedness or incur liability, within the constitutional limitation, by undertaking an obligation which is to be paid out of a special fund consisting entirely of revenue or income from

the property purchased or constructed.”¹ *Asson v. City of Burley*, 105 Idaho 432, 438, 670 P.2d 839, 845 (1983); *Feil*, 23 Idaho at 36-42, 129 P. at 644-646. The *Feil* decision does not govern the outcome of this action and, therefore, Respondent’s assertion of *res judicata* is misplaced².

The Court’s decision in *Feil* is most notable for its holding distinguishing between the term “indebtedness” and the term “liability” as used in Article VIII, § 3, determining that “the word ‘liability’ . . . is a much more sweeping and comprehensive term than the word ‘indebtedness.’” *Feil*, 23 Idaho at 50, 129 P. at 649. The Court’s distinction between the terms was a reaction to the language employed by analogous constitutional provisions from other states; which provisions did not include the term “liability” in addition to the term “indebtedness.” See *Feil*, 23 Idaho at 48, 129 P. at 648-649. It was not a rejection of judicial guidance from other courts, but simply a recognition that, at that time, Idaho’s constitutional provision was distinguishable. This reality has since changed and Idaho is no longer “unique” as asserted by Respondent. See *Response*, p. 9. For example, California has nearly identical constitutional language³ to Idaho and serves as an excellent source of non-binding precedent for the annual appropriation lease structure now before this Court.

¹ *Feil* no longer prevents application of the special fund exception because that exception has been made a part of Idaho law by way of amendments to Article VIII, § 3. See, *Idaho Water Resource Board v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).

² In the Fourth District, Judge Woodland upheld a non-appropriation lease to finance the Ada County courthouse, finding a lease subject to annual appropriation does not violate Article VIII, § 3. See *Ada Co. Property Owners Assn., Inc. v. County of Ada*, Case No. CV-OC-9804773D (4th Dist. August 25, 1999) attached as Ex. E to the *Memorandum in Support*.

³ Article XVI, Section 18 (formerly Article XI, Section 18) of California’s Constitution provides, in pertinent part: “No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters of the public entity voting at an election to be held for that purpose . . .”.

Additionally, Respondent cannot cherry-pick the Court's holding in *Feil* and ignore the Court's subsequent holdings supporting the District's contention that the Lease Agreement is not an indebtedness or liability prohibited under Article VIII, § 3 because the District has not incurred and will not incur any obligation beyond its current fiscal year. See *Memorandum in Support*, p. 14-15. Although the Idaho Supreme Court has not yet been confronted with a lease containing an annual non-appropriation clause, the Court has held that where a proposed plan does *not* bind future governments, or obligates only *current appropriations*, no prohibited "debt or liability" is created. *Lyons v. Bottolfsen*, 61 Idaho 281, 287, 101 P.2d 1, 6-7 (1940). See also *Foster's, Inc. v. Boise City*, 63 Idaho 201, 204, 118 P.2d 721, 724 (1941) (where no debt or liability was created except a provision for payment during the fiscal year for which it was incurred, the transaction did not violate the constitution). Thus, only an obligation that purports to bind the obligor beyond the current fiscal year's revenues will be considered a debt or liability incurred in violation of Article VIII, § 3.

Nor is it reasonable for Respondent to suggest that the Lease Agreement, which allows the District to walk away without obligation at the end of each fiscal year, is the functional equivalent of a long-term purchase agreement or a long-term mortgage. See *Response*, p.15-16. The determinative inquiry is not the extent to which the Lease Agreement resembles an installment purchase contract, but the fact that the District's liability in future years is contingent upon receipt of some additional, contemporaneous consideration such as ongoing use and occupancy of the Financed Project. See *Rider v. City of San Diego*, 959 P.2d 347, 355 (Cal. 1998); see also *Memorandum in Support*, p. 18-19.

Moreover, Respondent's insinuation that the Court's holding in *Koch v. Canyon County* somehow renders the annual appropriation structure of the Lease Agreement to be constitutionally invalid is without merit. See *Response*, p. 15. Respondent's citation of *Koch* on

p. 15 of his *Response* ignores the context of the Court's statements; which was a determination of taxpayer standing to challenge a lease agreement entered into by the county. The portion of the Court's decision cited by Respondent dealt with congressional "appropriations" under Congress' taxing and spending power, not annual appropriations under a lease agreement and did not extend beyond the issue of standing. See *Koch*, 145 Idaho 158, 162, 177 P.3d 372, 376 (2008). In any event, the Idaho Constitution on its face does not prohibit the District from making appropriations or incurring debts or liabilities that are not in excess of the District's revenue and income for that year.

The Lease Agreement has been structured to comply with Article VIII, § 3, not to evade it. Simply stated, the District is not bound under the Lease Agreement beyond its current fiscal year. Respondent himself effectively concedes that the Lease Agreement does not constitute a prohibited indebtedness or obligation under Article VIII, § 3, stating: "[e]ach new Lease has no binding effect beyond the current calendar year and if, not renewed, it terminates the right to renew, and, as the Lease itself provides: 'no provision of the Lease shall survive termination.'" *Response*, p. 16 (emphasis added).

2. Neither the Gardner MDA nor the Purchase Agreement violates Article VIII, § 3.

It is not before the Court whether the Gardner MDA or the Purchase Agreement constitutes a debt or liability under Article VIII, § 3. The District only seeks a determination as to the constitutionality of the Lease Agreement. Nonetheless, neither the Gardner MDA nor the Purchase Agreement violates Article VIII, § 3.

No indebtedness or liability has occurred in violation of Article VIII, § 3 because the District, at the time it entered into the Gardner MDA, had sufficient funds on hand to meet the obligation. It is well-settled that "[i]f at the time the obligation is created, there is money in the

treasury sufficient to meet a liability, and which can be applied to it when due, no indebtedness is incurred.” 15 McQuillin Mun. Corp. § 41:19 (3d ed.).

Thus, if when a city makes a contract, for a filtration plant for example, it has on hand funds available, that is, sufficient in amount to meet its obligations under the contract as they mature, **obviously no indebtedness is created. It is a cash transaction.**

Id. (emphasis added); see also *Carruth v. City of Madera*, 233 Cal. App. 2d 688, 695 (1965) (holding that a city’s contract to install water facilities for a new subdivision did not violate the California Constitution when there were sufficient general funds of the city to meet the obligation both in the year the contract was made and the year when performance was demanded). Taking the analysis a step further, courts have found that, in addition to cash on hand, amounts to be levied and collected during the year in which the liability is incurred must also be considered in determining whether a constitutional violation has occurred. See *Rawls v. City of Jonesboro*, 212 Ga. 734, 736 95 S.E. 2d 657, 658-659 (1956). The Idaho Supreme Court subscribes to this reasoning, holding that, under Article VIII, § 3, a municipality may anticipate both the income and revenue provided for it for such year and incur debts or liabilities which can be met and discharged out of the aggregate income and revenue for that year, but has no right to anticipate income or revenue for more than the current year. See *Feil*, 23 Idaho at 45, 129 P. at 647.

Thus, the general funds of the District available to meet the obligations of the District consist not just of cash on hand at the time the obligation is incurred, but also of the Room Tax collections to be received during the fiscal year. General availability is sufficient and no specified commitment of the general funds is required as suggested by Respondent. See 15 McQuillin Mun. Corp. § 41:19 (3d ed.); see also *Carruth*, 233 Cal. App. 2d at 695. Regardless, the District has in fact committed funds sufficient to cover the estimated purchase price of the Centre Facilities. *Supplemental Affidavit of Patrick Rice in Support of Petition for Judicial*

Confirmation, ¶ 6, Exhibit A - Resolution (herein "*Supp. Rice Affidavit*"). Additionally, at the time the District entered into the Gardner MDA in November 2014, it had sufficient amounts available in its general account to purchase the Centre Facilities.⁴ *Id.* Moreover, the District anticipates annual receipts from the Room Tax to be approximately \$4,889,858 in fiscal year 2015, which funds shall be available to meet the obligations of the District, including any potential annualized payments under the Clearwater Lease referenced by Respondent in his *Response*.⁵ *Response*, p. 14.

By reason of the foregoing, the District, by its execution of the Gardner MDA, has not created any indebtedness or liability in violation of Article VIII, § 3.

C. The Agency has the authority to enter into and enforce the Lease Agreement.

Before addressing Respondent's arguments concerning the Agency's authority, the District directs the Court's attention to the decision of Judge Woodland in *Ada Co. Property Owners Assn., Inc. v. County of Ada*, Case No. CV-OC-9804773D (4th Dist. August 25, 1999) attached as Exhibit E to Petitioner's *Memorandum in Support*. While not specifically addressed in the Court's decision, the same issues were present and the Court upheld the constitutionality of a non-appropriation lease to finance the Ada County Courthouse. More particularly, the bonds issued for the Ada County Courthouse project extended for a term beyond the termination date of the River Street-Myrtle Street Urban Renewal Plan as did the potential renewal terms under a non-appropriation lease similar to the Lease Agreement at issue in this case. By finding the Ada

⁴ As shown the District's unaudited balance sheet dated November 29, 2014, at the time of executing the Gardner MDA, the District had \$13,000,000 committed to the expansion of its existing convention facilities and an additional \$7,786,875 available in unassigned funds. This combined balance of \$20,786,875 exceeds the \$19,091,084 estimated purchase price of the Centre Facilities. *Supp. Rice Affidavit*, Ex. A - Resolution.

⁵ Annual lease payments under the Clearwater Lease are estimated to be approximately \$586,795; well below the anticipated Room Tax receipts of the District for the current fiscal year. *Supp. Rice Affidavit*, ¶ 7.

County Courthouse lease to be constitutional, the Court effectively validated the authority of an urban renewal agency to enter into an annual appropriation lease with renewals and a potential lease term extending beyond the termination date of the applicable urban renewal plan.

Nonetheless, Respondent asserts that the termination of the Boise Central District 2007 Amended and Restated Urban Renewal Plan (the “Central District Plan” or the “Plan”) at the end of 2017 is a fatal flaw in the District’s case. *Response*, p. 16-20. Respondent’s position is without merit for the following reasons.

1. The Agency’s authority is not before the Court.

The Agency’s authority is not before the Court because this is not an issue that the District seeks to have judicially validated. Unlike the validity of the appropriation clause in the Lease Agreement which Wells Fargo requires to be judicially validated before it will fund a financing, none of the parties involved in the Financed Project is requiring an adjudication of the Agency’s powers, and the District did not so petition. The Agency’s authority to enter into the Lease Agreement is not before the Court.

2. Respondent has misapplied the law relating to renewal of leases.

Respondent’s argument also fails on the merits. Respondent first contends that the termination of the Plan on December 31, 2017 terminates the authority of the Agency to enter into a renewal term of the Lease Agreement if the District chooses to make an annual renewal after that date. Respondent’s contention is unsupported by law or fact. Respondent argues: “under [the] Lease provisions any renewal of the Lease constitutes a wholly new, independent lease.” *Response*, p. 16. Notably, Respondent asserts this claim without any cite to the provisions of the Lease Agreement itself, no doubt because the Lease Agreement in fact supports the opposite conclusion; i.e., each renewal constitutes a continuation of the Lease Agreement

under the same contract and terms, for an additional one year Renewal Term. Such a construction is consistent with law:

A renewal of a lease commonly imports an extension of the tenancy for a like term and does not create a new lease. Where the agreement of the parties gives the tenant the option to continue the original lease for an additional term, rather than the right to require a new lease, the tenant on exercising the option holds the premises under the original letting and not under the notice that he or she is exercising the option. The exercise of an option for an extension effects a simple prolongation of the original lease for a further term.

The legal effect of the extension is to continue all the terms of the lease in force.

52 C.J.S. Landlord & Tenant § 105 (2014). “A covenant to extend or renew ordinarily imports a holding for the additional period on the same terms, conditions, and essential covenants as those contained in the original lease.” 52 C.J.S. Landlord & Tenant § 102. Thus, “in the absence of an express provision that a new lease is to be executed in case of renewal, the presumption is that no [new] lease is intended but that the lessee is to continue to hold under the original lease.” 52 C.J.S. Landlord & Tenant § 101.

Section 5.1 of the Lease Agreement directly follows the legal precept set forth above:

- (a) This Lease is effective, and is a binding obligation of both the District and the Agency, as of the Effective Date.
- ...
- (b) At any time during the Initial Term and during each Renewal Term thereafter, the District may, in its sole discretion, renew **this Lease** for the next subsequent Renewal Term by budgeting funds to pay Rent for such Renewal Term and by giving Notice of Intent to Renew to the Agency. The Notice of Intent to Renew shall be accompanied by a certified copy of the resolution or other official action of the District Board adopting its budget which includes the expenditure of funds for Rent for the Renewal Term.
- ...
- (d) Subject to the preceding sections, **this Lease** may be renewed for a total of twenty-four (24) consecutive one-year Renewal Terms commencing on December 1 and ending on November 30 of each following calendar year.

Petition, Exhibit B, Lease Agreement § 5.1(a), (b), & (d) (emphasis added). Accordingly, it is clear from the express language of the Lease Agreement that no new lease is to be executed between the parties upon the District's exercise of its sole option to renew.⁶ Rather, "*this Lease*," defined as the Lease Agreement, continues for the next subsequent Renewal Term.

Moreover, under the terms of the Lease Agreement, the Agency is bound as of the Effective Date and continues to be bound for as long as the District renews. The Agency has no option to terminate the Lease Agreement except in the event of a default by the District. See *Petition*, Exhibit B, Lease Agreement §§ 3.3, 5.1, & 10.2; *Rice Affidavit*, ¶ 16; *Brunelle Affidavit*, ¶ 12. Thus, once the District and the Agency execute the Lease Agreement⁷, which is anticipated to occur following completion of construction of the Financed Project in mid-2016, the Agency, at the sole discretion of the District, is bound for up to the entire twenty-four (24) year term of the Lease Agreement. It is the District, not the Agency, that has the option to renew. For the foregoing reasons, Respondent's argument that any "renewal" of the Lease Agreement constitutes a wholly new, independent lease fails absolutely.

Lastly, it must be remembered that the Agency is not an entity subject to the provisions of Article VIII, § 3 of the Idaho Constitution, and the Idaho Supreme Court has confirmed the Agency's authority to enter into debt without seeking voter approval. See *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 883, 499 P.2d 575, 582 (1972). The *Yick Kong*

⁶ Respondent arguments are founded, in part, on an unsupported and mistaken belief that the Agency has the ability to renew the Lease Agreement. See *Response*, p. 20 (stating "the Agency's authority to renew the Lease Agreement after termination of the Central District Plan disappears."). As discussed herein and expressly set forth in the Lease Agreement, the ability to renew the Lease Agreement rests solely with the District.

⁷ The parties' execution of the Lease Agreement is dependent upon successful completion of these Judicial Confirmation Proceedings.

decision was recently reaffirmed in *Urban Renewal Agency of City of Rexburg v. Hart*, 148 Idaho 299, 222 P.3d 467 (2009).⁸

3. Respondent has misinterpreted the Urban Renewal Law and the intent and meaning of the termination provisions of the Central District Plan.

Respondent further asserts that the termination of Agency's revenue allocation authority under the Plan at the end of 2017 prevents the Agency from entering into the Lease Agreement prior to plan termination. In so doing, Respondent repeatedly ignores underlying facts and misapplies applicable law.

a. The termination date of the Central District Plan has no effect on the Agency's execution of the Lease Agreement.

Respondent sets forth four supposed hypotheticals on pages 18-19 of his *Response*. The first three hypotheticals all assume the Lease Agreement is not entered into before December 31, 2017. The pleadings on file herein are clear that all relevant transactions are estimated to occur at the time of, or prior to, completion of construction in mid-2016, nearly a year and half before termination of the Central District Plan. See *Rice Affidavit*, ¶¶ 10-16. There is simply no basis for Respondent's suppositions that these relevant transactions may occur after December 31, 2017. Respondent's fourth hypothetical is addressed in section 3(b) below.

Nor does the applicable law support Respondent's position. Idaho Code § 50-2006(a) contemplates that the Agency as an entity continues despite the termination of an urban renewal plan. Although the revenue allocation authority for the Central District Plan will terminate on December 31, 2017, the Agency will remain in existence and will continue to operate. The Agency retains broad powers under Idaho Code § 50-2007, including the power to acquire real

⁸ Arguably, the Agency's ability to enter into long-term debt without a vote is further supported by Art. VIII, § 1 of the Idaho Constitution, which provides, in pertinent part: "The debts or liabilities of independent public bodies corporate and politic created by law and which have no power to levy taxes or obligate the general fund of the state are not debts or liabilities of the state of Idaho."

property and to “enter into any contracts necessary to effectuate the purposes of this act.” Idaho Code § 50-2007(c). The law does not require an existing plan in order for the Agency to enter into a new leases. In fact, once an agency makes the findings required in Idaho Code § 50-2005, the Agency is authorized to transact business in the municipality.

- b. The Agency has the express statutory authority to retain the asset post-termination of the Agency’s revenue allocation authority so long as the Agency has resources other than revenue allocation funds to operate and manage the asset.**

The ability of the Agency to retain ownership of assets located within the Plan area post-termination of the Agency’s revenue allocation authority is set forth in Section 800 of the Plan and Idaho Code § 50-2905(8). Section 800 states, in pertinent part:

Section 800 DURATION OF THIS PLAN

Except for the nondiscrimination and nonsegregation provisions which shall run in perpetuity, the provisions of this Plan shall be effective, and the provisions of other documents formulated pursuant to this Plan may be made effective, for thirty (30) years from the date of adoption of this Plan by the City Council through December 31, 2017, which date shall be deemed the termination date of this Plan, except for any revenue allocation proceeds received in calendar year 2018.

As allowed by Idaho Code Section 50-2905[8], the Agency may retain assets or revenues generated from such assets as long as the Agency shall have resources other than revenue allocation funds to operate and manage such assets. The Agency may retain ownership of the several parking facilities which may be constructed in the Project Area, as parking revenues may be sufficient to provide the resources necessary for the Agency to retain those assets. Similarly, the Agency may retain facilities which provide a lease income stream that will allow the Agency to meet debt service obligations, fully retire the facility debt, and provide for the continued operation and management of the facility.

Supplemental Affidavit of John Brunelle in Support of Petition for Judicial Confirmation, Exhibit A (herein “*Supp. Brunelle Affidavit*”) (emphasis added). In addition, the Agency retains the right to manage and control its property as set forth in Section 306 of the Plan:

Section 306 PROPERTY MANAGEMENT

During such time such property, if any, in the Project Area is owned by the Agency, such property shall be under the management and control of the Agency. Such property may be rented or leased by the Agency pending its disposition for redevelopment, and such rental or lease shall be pursuant to such policies as the Agency may adopt.

Id. Accordingly, although the Central District Plan terminates on December 31, 2017, the Agency may retain assets and / or facilities post-termination, and continue operation, management and control of the same, so long as the income stream supporting such assets and / or facilities is not tax increment funds. See also Idaho Code § 50-2905(8).

Respondent's fourth hypothetical scenario, found on page 19 of *Respondent's Response*, identifies a factual situation that could potentially occur: namely, that the District fails to renew the Lease Agreement after December 31, 2017 and the Agency must take action with respect to the Financed Project. Without question, at that point the Agency would be the owner--its lessee, the District, having forfeited any possessory interest by terminating the Lease Agreement, and therefore Section 800 of the Plan and Idaho Code Section 50-2905(8) clearly apply. As discussed above, the Agency is not committing tax increment funds for repayment of debt service on the Financed Project. Accordingly, just as the Agency may retain ownership of its parking facilities post-termination as described in Section 800 of the Plan, it may retain ownership of the Financed Project. Respondent appears to concede this point, but then argues that the Agency's remedies as owner of the Financed Project in the event the District does not renew the Lease Agreement somehow do not rise to the sufficiency contemplated by Idaho Code § 50-2905(8) and Section 800 of the Plan because "a mere annual lease does not qualify as the type of . . . revenue stream . . . envisioned by I.C. § 50-2905(8)". *Response*, p. 19. Legally and factually, Respondent is incorrect. The sole purpose of Idaho Code § 50-2905(8) and Section 800 of the Plan is to underscore that tax increment not be used, not to restrict or mandate the Agency's remedies or actions. More importantly, under the facts of the proposed transaction, the Agency will assign

all of its rights to Wells Fargo under a Deed of Trust. See *Petition* Exhibit C, Term Sheet, p.2, 5. In that case, the Agency will cease to be the owner, in which event § 50-2905(8) is no longer applicable and the Agency will absolve itself of further obligation on the Note by letting Wells Fargo pursue its remedies, thereby satisfying the debt retirement clause of the Plan.

By reason of the foregoing, the arguments contained in Section 3 of Respondent's *Response* necessarily fail.

D. The Right to Vote is not implicated here.

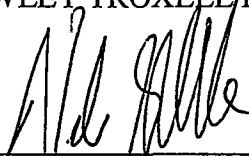
Lastly, Respondent asserts that the Court must apply strict scrutiny to the *Petition* because it infringes on the right to vote. Respondent's contention is without merit. The right to vote is not implicated in this matter as the Lease Agreement does not constitute an indebtedness or liability requiring a vote pursuant to Article VIII, § 3.

II. CONCLUSION

Based on the foregoing, Petitioner's *Memorandum in Support*, and the Affidavits and pleadings on file herein, Petitioner requests an order confirming Petitioner's power and authority to enter into the Lease Agreement based on the finding that such Lease Agreement is not a debt or obligation under Article VIII, §3 of the Idaho Constitution.

RESPECTFULLY SUBMITTED THIS 20th day of February, 2015.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By 

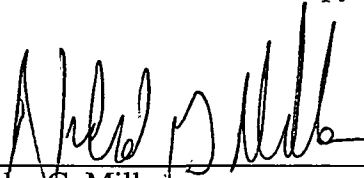
Nicholas G. Miller ISB No. 3041
Attorneys for Petitioner
Greater Boise Auditorium District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of February, 2015, I caused to be served a true copy of the foregoing REPLY MEMORANDUM TO RESPONDENT'S BRIEF IN OPPOSITION TO MEMORANDUM IN SUPPORT OF PETITION FOR JUDICIAL CONFIRMATION by the method indicated below, and addressed to each of the following:

John L. Runft, Esq.
Runft & Steele Law Offices, PLLC
1020 W. Main St., Ste. 400
Boise, ID 83702

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ E-mail
☐ Telecopy



Nicholas G. Miller

MAR 23 2015

CHRISTOPHER D. RICH, Clerk
By JANINE KORSEN
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF:

GREATER BOISE AUDITORIUM
DISTRICT

Case No. CV-OT-2014-23695

ORDER DENYING PETITION FOR
JUDICIAL CONFIRMATION

The Greater Boise Auditorium District's Petition for Judicial Review (filed Dec. 19, 2014) came before the Court for hearing on February 25, 2015. Pursuant to Idaho Code § 7-1308, the Court finds facts and law as identified below.

Appearances:

Donald Knickrehm and Adam Christenson for Petitioner Greater Boise Auditorium District
John Runft for Objector David Frazier, resident and property owner in Boise

FINDINGS OF FACT

The Greater Boise Auditorium District (the "District") is a governmental entity organized under Idaho Code § 67-4901, et seq. Because it is a governmental subdivision, it is subject to Article VIII, § 3 of the Idaho Constitution, which reads in part,

No county, city, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provisions shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within thirty

years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void.

Idaho Const. Art. VIII, § 3.

The District currently operates the Boise Centre, an 85,000 square foot convention center and public event facility located in downtown Boise. The District seeks to expand its facilities at the Boise Centre, and so seeks to enter into a “lease agreement to finance the acquisition of condominium units containing a new ballroom facility, related kitchen and ancillary facilities along with related soft costs and equipment.”¹ The anticipated cost of this expansion is \$19,091,084.00 for, “soft costs and equipment,” plus an additional \$2,145,316.00 in reserves and financing costs, for a total of \$21,236,400.²

To accomplish this expansion, the District has engaged in a complex contract and financing scheme. K.C. Gardner Company, L.C. (“Gardner”), a Utah limited liability company, acquired title to land located to the south and to the west of the U.S. Bank building, in close proximity to the Boise Centre. Gardner is constructing buildings on those parcels. On Nov. 20, 2014, the District entered a contract entitled, “Amended and Restated Master Development Agreement Between Greater Boise Auditorium District and KC Gardner Company, L.C.”³ (hereinafter “MDA”). The MDA does not set forth all the terms of the agreement between the parties for the construction and purchase of the expanded facilities, and instead contains general precatory language about what the parties desire to accomplish, and how it will be accomplished. However, there is mandatory language contained in the MDA. For example, the MDA states

2.2 Purchase and Sale Agreement. Gardner and the District shall execute and enter into a Purchase and Sale Agreement (the “PSA”) for the Centre Facilities provided that Gardner shall sell to the District and the District shall purchase from Gardner the Centre Facilities. The PSA shall be substantially in the form attached hereto as Exhibit “D”. The PSA shall include the right of the District to assign it and the right to purchase therein provided to the Capital City Development Corporation.⁴

¹ Id., ¶ 8.

² Id., ¶29.

³ Affidavit of John L. Runft in Support of Respondent’s Brief in Opposition to Memorandum in Support of Petition for Judicial Confirmation, filed Feb. 13, 2015, Ex. 1.

⁴ Affidavit of John L. Runft in Support of Respondent’s Brief in Opposition to Memorandum in Support of Petition for Judicial Confirmation, filed Feb. 13, 2015, Ex. 1, p. 3 (§ 2.2).

This language essentially requires the District and Gardner to enter the PSA, which, as indicated, has been substantially drafted and negotiated.

On Dec. 19, 2014, the District entered an Amended and Restated Development Agreement (“RDA”) with the Urban Renewal Agency of Boise City, Idaho, a/k/a/ Capital City Development Corporation (the “Agency”). The Agency is an urban renewal agency organized and operating under Idaho Code Title 50, chps. 20 and 29. The Agency is not a governmental subdivision or entity, and therefore is not subject to the requirements of Article VIII, § 3 of the Idaho Constitution. The RDA, “amends and restates the Development Agreement entered into between the District and Agency dated June 9, 2014.”⁵ It further makes clear the purchase of the facilities from Gardner is part of a larger project which includes improvements to the Grove Plaza between the Boise Centre and the new facilities, as well renovation to the Boise Centre itself, for a total anticipated cost of approximately \$38,000,000.00.

Between the RDA, the MDA, the PSA, and related documents, a fair picture can be obtained as to how the District, the Agency, and Gardner plan to accomplish the purchase and construction of the new facilities. This plan may be summarized as follows: The District and Gardner will enter the PSA for the construction and sale of the new facilities. The District will immediately (or very shortly) thereafter, assign all of its interest in the new facilities to the Agency, who has power to obtain financing through Wells Fargo, a commercial lender, and issue a promissory note and deed of trust to secure financing. Once the new facilities are completed, the Agency will then lease the new facilities back to the District, utilizing the annual lease payments to pay the principal and interest due on the promissory note. The lease, by its terms will last only one year, and will be renewable for a total of 24 one-year terms, in the discretion of the District. The District is also given the right to purchase the new facilities from the Agency at any time during the lease period or after the promissory note has been paid off under certain terms.

On Dec. 19, 2014, the District submitted a Petition for Judicial Confirmation to the Court, pursuant to Idaho Code § 7-1304. The petition does not seek judicial confirmation of the MDA, the RDA or the PSA, but instead seeks, “a judicial determination that the Lease Agreement, which obligates the Petitioner for an initial term ending on the District’s November

⁵ Petition for Judicial Confirmation, filed Dec. 19, 2014, Ex. A (p. 1).

30 fiscal year-end, and is renewable each year thereafter through appropriation, budgeting, and affirmative notice of the intent to renew, is a valid obligation under Article VIII, § 3 of the Idaho Constitution.”⁶ This petition was accompanied by a memorandum and various affidavits.⁷ The District has stated that financing through Wells Fargo will not be obtained unless judicial confirmation of the proposed contract is also first obtained.

David Frazier, a resident and property owner in Boise, and within the District, filed an Answer as allowed by Idaho Code § 7-1307.⁸ Frazier also filed responsive briefing and affidavits, objecting to judicial confirmation.⁹

The Court notes that this is not the District’s first attempt to obtain judicial confirmation for the lease of the new facilities. Previously, the District filed a petition for judicial confirmation on Jun. 11, 2014, in Ada County Case No. CV-OT-2014-11320. On Aug. 28, 2014, Judge Moody issued an Order Denying Petition for Judicial Confirmation.¹⁰ In that case, the Court considered a very similar financing structure to what is at issue in this case. Judge Moody determined the proposed lease agreement violated Article VIII, § 3 of the Idaho Constitution because of the existence of liabilities that go beyond the one-year limitation.¹¹ After denying the Petition, the Court entered a Judgment.¹² The District then requested, and was granted, an enlargement of time in which to revise the financing and other agreements, provide the statutory notice required for a petition for judicial confirmation, and to file a Motion for Reconsideration

⁶ Id., ¶37.

⁷ See Memorandum in Support of Petition for Judicial Confirmation, filed Jan. 26, 2015; Affidavit of Posting, Mailing and Publishing of Notice of Public Hearing and of Posting and Publishing Notice of Filing Petition for Judicial Confirmation and Notice of Hearing Thereon, filed Jan. 26, 2015; Affidavit of Linda K. Armstrong, as a Representative of Wells Fargo Bank, N.A. Re: Petition for Judicial Confirmation, filed Jan. 26, 2015; Affidavit of John Brunelle in Support of Petition for Judicial Confirmation, filed Jan. 26, 2015; Affidavit of David Wali in Support of Petition for Judicial Confirmation, filed Jan. 26, 2015; Affidavit of Patrick Rice in Support of Petition for Judicial Confirmation, filed Jan. 26, 2015.

⁸ Answer to Petition for Judicial Confirmation, filed Jan. 9, 2015.

⁹ Respondent’s Brief in Opposition to Memorandum in Support of Petition for Judicial Confirmation, filed Feb. 13, 2015; Affidavit of John L. Runft in Support of Respondent’s Brief in Opposition to Memorandum in Support of Petition for Judicial Confirmation, filed Feb. 13, 2015.

¹⁰ Order Denying Petition for Judicial Confirmation, filed Aug. 28, 2014 (Ada County Case No. CV-OT-2014-11320).

¹¹ Id., pp. 14 – 15.

¹² Judgment, filed Aug. 29, 2014 (Ada County Case No. CV-OT-2014-11320).

with the Court.¹³ However, no motion for reconsideration was ever filed. As stated above, the present action commenced on Dec. 19, 2014.

A hearing was held Feb. 25, 2014. The Court considered the arguments presented by both the District and the respondent, as well as the evidence presented through affidavits. No additional evidence was presented at the hearing, only arguments.

ANALYSIS AND CONCLUSIONS OF LAW

A. Judicial Notice of CV-OT-2014-11320 Case File

Because the issues in this case are almost identical to those previously decided by Judge Moody, the Court takes judicial notice, pursuant to I.R.E. 201 and Idaho Code § 9-101, of all documents contained in Ada County Case No. CV-OT-2014-11320. Further, the Court adopts the analysis presented by Judge Moody. However, as discussed below, the Court does not view this as merely a reconsideration of Judge Moody's prior decision, and therefore applies the analysis to the facts presented in this case.

B. Petition for Judicial Confirmation

The Idaho Legislature has determined, "An early judicial examination into and determination of the validity of the power of any political subdivision to issue bonds or obligations and execute any agreements or security instruments therefor promotes the health, safety and welfare of the people of the state." Idaho Code § 7-1302(1). To this end, the Legislature has created a method through which political subdivisions may petition the Court, "praying a judicial examination and determination of the validity of any bond or obligation or of any agreement or security instrument related thereto, of the political subdivision, whether or not such bond or obligation agreement has been validly exercised, or executed." Idaho Code § 7-1304(1). Such petition may be made in the discretion of the political subdivision, and is not required before entering any contract. Id. Prior to filing the petition, the political subdivision must hold a public hearing regarding adopting a resolution to file the petition, and is required to give notice prior to the hearing. Idaho Code § 7-1304(3).

There is no Idaho caselaw interpreting Idaho Code § 7-1304, and therefore the applicable legal standard has never been identified by an appellate court. However, statutory law states

¹³ Motion for Enlargement of Time for Filing Motion for Reconsideration and for Filing Motion for Leave to Amend Petition, filed Sep. 12, 2014 (Ada County Case No. CV-OT-2014-11320); Order Enlarging Time for Petition to File Motion for Reconsideration and Motion for Leave to Amend Petition, filed Sep. 18, 2014 (Ada County Case No. CV-OT-2014-11320).

upon filing of a valid petition, the Court, “shall examine into and determine all matters and things affecting each question submitted, shall make such findings with reference thereto and render such judgment and decree thereon as the case warrants.” Idaho Code § 7-1308(1). Further, the judicial confirmation law tasks the Court with determining the validity of any agreement. Idaho Code § 7-1304(1). “An illegal contract is one that rests on illegal consideration consisting of any act or forbearance which is contrary to law or public policy, and such a contract is illegal and unenforceable.” *Taylor v. AIA Servs. Corp.*, 151 Idaho 552, 564, 261 P.3d 829, 841 (2011). “Whether a contract is illegal is a question of law for the court to determine from all the facts and circumstances of each case.” *Trees v. Kersey*, 138 Idaho 3, 6, 56 P.3d 765, 768 (2002).

C. Notice Requirements

No objection has been presented by any party regarding the notice requirements of Idaho Code §§ 7-1304(3) and 7-1306. The Court is satisfied that sufficient notice was given as required by Idaho Code § 7-1306(3), and therefore the Court has jurisdiction to hear this matter.

D. The Lease Agreement

The Court is tasked with only one question in this case: is the proposed lease/purchase agreement between the District and Agency valid? The District and the respondent present arguments regarding the validity of the MDA, the RDA, and the PSA, but those contracts are not currently before the Court. For right or for wrong, the MDA and RDA have already been executed, and whether they are valid is a question that must be answered, if at all, through separate challenges. Idaho Code § 7-1304(1) only requires the Court to consider the issues put before it by the political subdivision.

That being said, the Court can consider the context surrounding the contract to help the Court determine whether the contract itself is valid. The Court has set forth, above, the structure through which the District seeks to accomplish its goal, and the lease agreement is simply the final link in the chain. In summary, the end goal of this mire of complexity is for the District to end up with title to the new facilities, having spent over \$20,000,000.00 over a period of twenty-five years without offering the qualified voters within the District the opportunity to vote on such issue. The District makes no qualms that its purpose is to avoid a vote on the issue.

Though *Feil v. City of Coeur d'Alene*, 23 Idaho 32, 129 P. 643 (1912) specifically

addresses the common fund doctrine (and was later superseded through amendments to Article VIII, § 3 of the Idaho Constitution¹⁴), it still contains relevant language.

[T]he framers of our Constitution employed more sweeping and prohibitive language in framing section 3 of article 8, and pronounced a more positive prohibition against excessive indebtedness, than is to be found in any other Constitution to which our attention has been directed. It says: “No. * * * city * * * shall incur any indebtedness, or liability in any manner, or for any purpose, exceeding in that year the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof,” etc. The Constitution not only prohibits incurring any indebtedness, but it also prohibits incurring any liability “in any manner or for any purpose,” exceeding the yearly income and revenue. In this connection, it should also be observed that it not merely prohibits incurring any indebtedness or liability exceeding the revenue of the current year, but it also prohibits incurring any indebtedness or liability exceeding the income and revenue provided for such year.

...

The framers of our Constitution were not content to say that no city shall incur any indebtedness “in any manner or for any purpose,” but they rather preferred to say that no city shall incur any indebtedness or liability in any manner, or for any purpose. It must be clear to the ordinary mind, on reading this language, that the framers of the Constitution meant to cover all kinds and character of debts and obligations for which a city may become bound, and to preclude circuitous and evasive methods of incurring debts and obligations to be met by the city or its inhabitants.

Feil, 23 Idaho 32, 129 P. at 649. The District argues the lease agreement does not create a debt or liability beyond one year because of the particular language which it demanded be included in the lease. Indeed, the language of the proposed lease does give the District some fairly unusual contractual rights. § 5.1(a) provides that the lease commences as soon as the new facilities are finished, and ends on the Nov. 30 following the commencement (regardless of how long that period is).¹⁵ Such period of time is the whole length of the lease. After that initial period, the District may, “in its sole discretion,” renew the lease for another period lasting from Dec. 1, to Nov. 30 of the following year.¹⁶ The District may renew up to twenty-four times.¹⁷ These provisions amount to a nonappropriation clause, allowing the District to back out of the contract at any time the District does not appropriate money for the lease for the upcoming year. While

¹⁴ *Asson v. City of Burley*, 105 Idaho 432, 439, 670 P.2d 839, 846 (1983).

¹⁵ Petition for Judicial Confirmation, filed Dec. 19, 2014, Ex. B (§ 5.1(a)).

¹⁶ Id., Ex. B (§ 5.1(b) and (d)).

¹⁷ Id., Ex. B (§ 5.1(d)).

this could superficially be seen as a method to avoid any liability that lasts beyond a year, there are several problems with this argument.

The lease agreement does not address an issue which affects the liabilities of the District: namely, what happens if, for some reason, the entire financing structure fails and a lawsuit occurs? Contrary to the situation in the CV-OT-2014-11320 case, there is now a very identifiable third party who has an interest in the lease agreement: Wells Fargo. The proposed lease agreement tries to remedy this situation by stating

This Lease is made for the sole benefit of the District and Agency, and no other person or persons shall have rights or remedies hereunder except to the extent specifically provided herein and in the Note Purchase Agreement. The District and the Agency shall owe no duty to any claimant for labor performed or material furnished with respect to the Financed Project.¹⁸

This language shows intent by the District and Agency to limit duties and obligations owed under the lease to only the District and Agency. Further, there is no signature line on the lease agreement for Wells Fargo, nor do the notices sections of the agreement provide notice be sent to Wells Fargo.¹⁹ Thus, Wells Fargo cannot be argued to be a party to the lease agreement, and thus is not bound by any restrictions or limitations contained therein.

The District points to §8.12 of the lease agreement, which states, “\$100,000 of the Lease Contingency Fund shall be held as the sole source of payment for reasonable fees, costs, expenses, losses and liabilities of the Bank relating specifically to the Financed Project.”²⁰ Similarly, the lease agreement limits Wells Fargo’s liabilities upon default, stating, “In no event shall the District be liable in an amount greater than the Rent payable for the remainder of the Initial Term or the Renewal Term then in effect.”²¹ But, since Wells Fargo is not a party to the lease agreement, these provisions are not binding on Wells Fargo. *See, e.g. Tolley v. THI Co.*, 140 Idaho 253, 262, 92 P.3d 503, 512 (2004).

It could be argued that Wells Fargo has agreed to these limitations separately, in that Wells Fargo has included fairly similar language in its Summary of Proposed Terms and Conditions.²² However, this language is also tempered by the facts that there is no proposed

¹⁸ Id., Ex. B (§ 8.8 (p. 15)).

¹⁹ Id., Ex. B, pp.

²⁰ Id., Ex. B (§ 8.12(b) (p. 16)).

²¹ Id., Ex. B (§ 10.2(1), (p. 19)).

²² Id., Ex. C (p. 6).

contract between Wells Fargo and the Agency currently before the Court, and thus no agreement. Even if there were, Wells Fargo has retained the right to modify, “the financing and the par amount,” in its discretion based on a number of events, including, “events occur resulting in a material disruption of the market.”²³ If there is an unexpected disruption in the market, Wells Fargo has the right to modify its financing. Therefore, the \$100,000 limitation against the District is not absolute.

The District also contends if there is a default on the lease,

[U]nder the facts of the proposed transaction, the Agency will assign all of its rights to Wells Fargo under a Deed of Trust. In that case, the Agency will cease to be the owner, in which event § 50-2905(8) [of the Idaho Code] is no longer applicable and the Agency will absolve itself of further obligation on the Note by letting Wells Fargo pursue its remedies, thereby satisfying the debt retirement clause of the Plan.²⁴

If the District defaults on the lease, and the Agency has no ability to pay the debt, Wells Fargo will be allowed to pursue its remedies. As discussed above, the District does not establish that Wells Fargo will be barred from pursuing remedies against the District. While the promissory note will be between the Agency and Wells Fargo, the Court is not convinced there is no theory of law or set of facts under which Wells Fargo could not recover against the District. Several potential causes of action could exist under such circumstances, including both legal and equitable claims. The District cannot argue no liabilities will be created when it is clear many potential liabilities exist.

Under Idaho law, liability means, “Responsibility; the state of one who is bound in law and justice to do something which may be enforced by action. This liability may arise from contracts, either express or implied, or in consequence of torts committed. The state of being bound or obliged in law or justice.” *Feil*, 23 Idaho 32, 129 P. at 649. The District provides numerous other Idaho District Court decisions confirming similarly structured transactions, and caselaw from other states approving of similarly structured transactions.²⁵ These cases and

²³ Id., Ex. C (p. 6).

²⁴ Reply Memorandum to Respondent’s Brief in Opposition to Memorandum in Support of Petition for Judicial Confirmation, filed Feb. 20, 2015, pp. 14 – 15.

²⁵ Memorandum in Support of Petition for Judicial Confirmation, filed Jan. 26, 2015, Exs. A – G and Appx. A.

decisions are non-binding.²⁶ Further, some of the District Court decisions were made without objection.²⁷ The District is required to, “make a clear statement of the legal authority for the proposed expenditure.” Idaho Code § 7-1304(2). However, there is no precedential Idaho law on point regarding these types of lease/purchase agreements. The only discussion of this sort of situation to which the Court has been directed is contained in a concurring opinion of Justice Jim Jones in *In re Univ. Place/Idaho Water Ctr. Project*, where Justice Jones stated

The fact of the matter is that all state contracts contain those same provisions because Article VIII § 1 of the Idaho Constitution prohibits the State from incurring multi-year indebtedness without submitting the matter to the public for a vote. Article VIII § 3 imposes a similar limitation on public indebtedness with respect to subdivisions of state government. It is a virtual impossibility to present every multi-year governmental contract or lease to the public for a vote. Thus, leases and other contracts that are intended to extend beyond one year always contain provisions (1) making the government's performance subject to availability of appropriated funds and (2) making the agreement renewable on an annual basis for the contemplated term. That does not necessarily mean that the government's contracts or leases are less worthy than those between private parties.

In re Univ. Place/Idaho Water Ctr. Project, 146 Idaho 527, 547, 199 P.3d 102, 122 (2008). This language is not binding, nor does it specifically indicate that such nonappropriation clauses are legal. It merely discusses that such clauses are regularly included in governmental contracts. But the fact that a contract clause commonly occurs does not make the clause more or less legal.

Finally, the Court is not convinced the lease agreement is, as a matter of law, a true lease. There are many circumstances under which a lease will be deemed to be a disguised security interest in a sale.

The primary issue to be decided in determining whether a lease is intended as security is whether it is in effect a conditional sale in which the lessor retains an interest in the leased goods as security for the purchase price. While the inclusion of a purchase option in an agreement not terminable by a lessee does not, in and of itself, make the agreement one intended for security, the transaction is in substance a conditional sale where the lessee can become the owner of the leased property for only nominal consideration at the expiration of the lease.

²⁶ “If an opinion is not published, it may not be cited as authority or precedent in any court.” ID R S.CT. OP. RULES Rule 15. Because District Court cases are not published, they are not precedent.

²⁷ See Memorandum in Support of Petition for Judicial Confirmation, filed Jan. 26, 2015, Exs. B, C, and D.

That a lessee has acquired equity in leased property is important in proving that a transaction is a disguised sale, rather than a true lease, since it suggests that the lessor did not expect the return of the leased goods.

68A Am. Jur. 2d Secured Transactions § 92. *See also* 67 Am. Jur. 2d Sales § 28 (“The substance of the transaction generally prevails over the form, and designing a sale to appear in form as a lease does not alter the true nature of the transaction.”). Idaho subscribes to this principal. *See Transp. Equip. Rentals, Inc. v. Ivie*, 96 Idaho 223, 225, 526 P.2d 828, 830 (1974) (Bakes, J., dissenting, stating, “The name which the parties attach to their financial transaction is not controlling in determining whether or not it is a true lease or a financing arrangement.”); *Excel Leasing Co. v. Christensen*, 115 Idaho 708, 710, 769 P.2d 585, 587 (Ct. App. 1989); *W.L. Scott, Inc. v. Madras Aerotech, Inc.*, 103 Idaho 736, 740, 653 P.2d 791, 795 (1982). Bankruptcy law also engages in similar analyses. 9C Am. Jur. 2d Bankruptcy § 2669. And it is relevant for tax law. *See* 67B Am. Jur. 2d Sales and Use Taxes § 85. The facts of this case strongly suggest the lease between the Agency and the District is not a true lease. The District has the right to purchase the new facilities from the Agency for the amount of the promissory note, various bank fees, and \$10.²⁸ If the note is already fully paid off, whether through the District utilizing all twenty-four yearly renewals or some other method, the District can purchase the new facilities by reimbursing the Agency for any unpaid fees and expenses, and by paying an additional \$10.²⁹ For property with a purchase price of approximately \$20,000,000.00, these amounts are clearly nominal. The Agency is retaining essentially no value in the property once the lease is completed.

This raises the question of whether the lease transaction is in fact an equitable mortgage to which the District is a party. Idaho has long recognized the principle of equitable mortgages. *See Dickens v. Heston*, 53 Idaho 91, 21 P.2d 905, 908 (1933). Leases with options to purchase can act as equitable mortgages.³⁰ In this case, the financing structure requires the District to purchase the new facilities from Gardner, immediately transfer them to the Agency, and then lease them back from the Agency with the option to purchase for a nominal amount. This transaction ostensibly is a, “transfer of an interest in property . . . made only as a security for the

²⁸ Petition for Judicial Confirmation, filed Dec. 19, 2014, Ex. B (§ 11.2 (p. 20)).

²⁹ *Id.*, Ex. B (§ 11.3 (pp. 20 – 21)).

³⁰ *See Tomika Investments, Inc. v. Macedonia True Vine Pentecostal Holiness Church of God, Inc.*, 136 N.C. App. 493, 497, 524 S.E.2d 591, 594 (2000); *Adrian v. McKinnie*, 2002 S.D. 10, ¶ 13, 639 N.W.2d 529, 534.


performance of another act,” and is therefore a mortgage. Idaho Code § 45-904. If the lease is later construed as an actual or equitable mortgage, there is a corresponding liability.

Based on the review of the applicable law and the facts of this case, the Court determines the lease agreement does not comport with the requirements of Article VIII, § 3 of the Idaho Constitution. The lease, as formulated, subjects the District to significant liabilities beyond the year in which the contract is incurred. The District argues that such liability is not beyond the income and revenue provided for it for a given year, because the District currently has sufficient funds and anticipated income to cover the entire expense of the new facilities and lease agreement. The District even has adopted a resolution committing available general funds for 2015 to cover the purchase price of the new facilities.³¹ However, this argument is fleeting: if the money is dedicated but not actually used in 2015, there is no guarantee that it will be available for the renewal of the lease in 2016, 2017, or beyond. The District may either use the funds to pay for the new facilities up front, or it may submit the long term liabilities to the qualified voters of the District. But the Court will not confirm the lease agreement as currently presented to the Court.

CONCLUSION

Based on the foregoing, the Petition for Judicial Confirmation (filed Dec. 19, 2014) is DENIED.

ORDERED this 21st day of March, 2015.


Lynn Norton
District Judge

³¹ Id., Ex. A.

CERTIFICATE OF MAILING


I hereby certify that on this 23rd day of March, 2015, I mailed (served) a true and correct copy of the within instrument to:

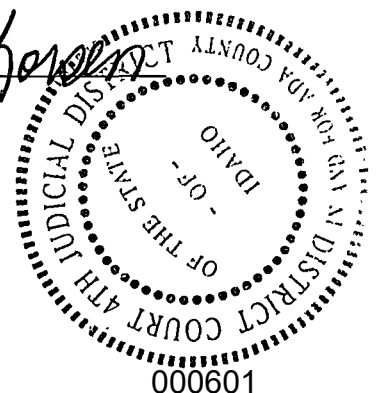
Donald E Knickrehm
Attorney at Law
601 W Bannock Street
Boise ID 83702

Nicholas G Miller
Attorney at Law
877 W Main Street Suite 1000
Boise ID 83702-5883

John L Runft
Attorney at Law
1020 W Main Street Suite 400
Boise ID 83702

CHRISTOPHER D. RICH
Clerk of the District Court

By: 
Deputy Court Clerk



CERTIFICATE OF MAILING

Norton
Janine
DRB
4-16-15

NO. _____ FILED _____
A.M. 9:15 P.M. _____

APR 06 2015

CHRISTOPHER D. RICH, Clerk
By JANINE KORSEN
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF:

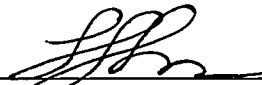
GREATER BOISE AUDITORIUM
DISTRICT,

Petitioner.

)
) Case No. CV OT 1423695
)
) JUDGMENT
)
)
)
)

JUDGMENT IS ENTERED AS FOLLOWS: it is hereby ordered, adjudged, and decreed
that the Petition for Judicial Confirmation is denied.

DATED this 3rd day of April, 2015.

By: 
Hon. Lynn Norton
District Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 6th day of April 2015, a true and correct copy of the foregoing **JUDGMENT**, was served upon opposing counsel as follows:

Donald E. Knickrehm
Givens Pursley LLP
601 E. Bannock St.
Boise, ID 83702
F: (208) 388-1300

☒ US Mail
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☐ Facsimile
☐ Email

Nicholas G. Miller
S.C. Danielle Quade
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877 W. Main St., Suite 1000
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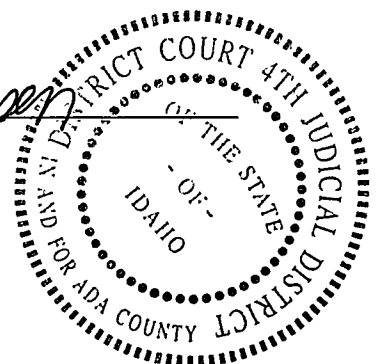
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John L. Runft
Runft & Steele Law Offices, PLLC
1020 W. Main St.
Suite 400
Boise, Idaho 83702
F. (208) 343-3246

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☐ Personal Delivery
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CHRISTOPHER D. RICH
Clerk of the District Court

By: *Jamie Horner*
Deputy Clerk



APR 24 2015

CHRISTOPHER D. RICH, Clerk
By **SANTIAGO BARRIOS**
DEPUTY

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Attorneys for Petitioner

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF:

THE GREATER BOISE AUDITORIUM
DISTRICT,

Petitioner.

Case No. CV TO 1423695

NOTICE OF APPEAL

TO: THE RESPONDENT, DAVID R. FRAZIER, AND HIS ATTORNEYS OF THE
FIRM RUNFT & STEELE LAW OFFICE, PLLC, 1020 W. MAIN STREET, SUITE 400,
BOISE, IDAHO 83702, AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named Petitioner, Greater Boise Auditorium District (the "District"),
as appellant appeals against the above named Respondent, David R. Frazier, to the Idaho

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Supreme Court from the final *Judgment* entered on April 6, 2015, Honorable Lynn G. Norton, presiding.

2. The District has a right to appeal to the Idaho Supreme Court, and the *Judgment* described in paragraph 1 above is an appealable judgment pursuant to I.A.R. 11(a)(1).

3. The District's preliminary statement of the issue on appeal is:

- Does the District's *Centre Lease* (which has an initial term ending on the last day of the District's current fiscal year and is subject to annual renewal only by affirmative action of the District in the District's unfettered discretion and under which no other entity has recourse against the District or any income stream available to the District in the event the District chooses not to renew) satisfy the requirement in Idaho Const. art. VIII, § 3 that (except for ordinary and necessary expenses or when voter approval is obtained) local governments may not incur debt or liability extending past one fiscal year?

Pursuant to I.A.R 17(f), the preliminary statement of issues on appeal set forth above shall not prevent the appellant from asserting other issues on appeal.

4. No order has been entered sealing all or any portion of the record.

5. (a) Is a reporter's transcript requested? Yes.

5. (b) The District requests the preparation of the following portions of the reporter's transcript in both hard copy and electronic format:

- Hearing on Petition for Judicial Review dated February 25, 2015.

6. The District requests the following documents (including any exhibits or attachments thereto) to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R:

(Doc 1)	01/20/2015	<i>Notice of Filing Petition for Judicial Confirmation and Notice of Hearing Thereon</i>
(Doc 2)	01/21/2015	<i>Stipulation Re Briefing Schedule</i>
(Doc 3)	01/26/2015	<i>Memorandum In Support Of Petition for Judicial Confirmation</i>
(Doc 4)	01/26/2015	<i>Affidavit Of Posting, Mailing & Publishing Notice of Filing Petition For Judicial Confirmation & Notice Of Hearing Thereon</i>
(Doc 5)	01/26/2015	<i>Affidavit Of Linda K. Armstrong, As a Representative of Wells Fargo Bank NA, Re: Petition for Judicial Confirmation</i>
(Doc 6)	01/26/2015	<i>Affidavit Of John Brunelle In Support Of Petition for Judicial Confirmation</i>
(Doc 7)	01/26/2015	<i>Affidavit Of David Wali In Support of Petition for Judicial Confirmation</i>
(Doc 8)	01/26/2015	<i>Affidavit Of Patrick Rice In Support of Petition for Judicial Confirmation</i>
(Doc 9)	02/11/2015	<i>Amended Stipulation Re: Briefing Schedule</i>
(Doc 10)	02/13/2015	<i>Respondent's Brief in Opposition to Memorandum in Support of Petition for Judicial Confirmation</i>
(Doc 11)	02/13/2015	<i>Affidavit of John L. Runft in Support of Respondent's Brief in Opposition to Memorandum in Support of Petition for Juridical Confirmation</i>
(Doc 12)	02/18/2015	<i>Errata Memorandum to Respondent's Brief</i>
(Doc 13)	02/19/2015	<i>Affidavit of Publishing of Notice of Filing Petition for Judicial Confirmation and Notice of Hearing</i>

(Doc 14)	02/20/2015	<i>Supplemental Affidavit of Patrick Rice in Support of Petition for Judicial Confirmation</i>
(Doc 15)	02/20/2015	<i>Supplemental Affidavit of John Brunelle in Support of Petition for Judicial Confirmation</i>
(Doc 16)	02/20/2015	<i>Reply Memorandum to Respondent's Brief in Opposition to Memorandum in Support of Petition for Judicial Confirmation</i>
(Doc 17)	03/23/2015	<i>Order Denying Petition for Judicial Confirmation</i>

The District also requests that the following document from *In the Matter of Greater Boise Auditorium District*, Case No. CV OT 1411320 be included in the clerk's record on appeal. This request is based on the fact that the District Court in the above-captioned matter took Judicial Notice of the record in said Case No. CV OT 1411320:

(Doc 18)	06/09/2014	<i>Petition for Judicial Confirmation</i>
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Note that the *Order Denying Petition for Judicial Confirmation* (Aug. 28, 2014) in Case No. CV OT 1411320 is not separately requested here because that order is included as part of Doc 2 above (Exhibit A to *Answer to Petition for Judicial Confirmation*).

7. The District does not request that any other documents, charts, or pictures be included in the record on appeal.

8. Christopher H. Meyer, the undersigned, hereby certifies:

a. That a copy of this notice of appeal was and/or will be, simultaneously with filing, served on each reporter of whom a transcript has been requested to wit:

Penny Tardiff
Ada County Courthouse
200 W. Front Street
Boise, ID 83702

b. That the reporter has been paid the estimated fee for preparation of the reporter's transcript.

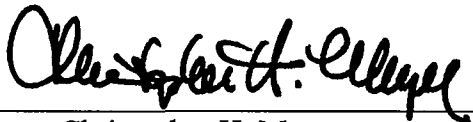
- c. That the estimated fee for preparation of the clerk's record has been paid.
- d. That all appellate filing fees have been paid.
- e. That a copy of this notice of appeal was and/or will be, simultaneously

with filing, served upon all other parties required pursuant to I.A.R. 20, to wit:

- RESPONDENT DAVID R. FRAZIER
Via his counsel:
John L. Runft, Esq.
Jon M. Steele, Esq.
Runft & Steele Law Offices, PLLC
1020 W Main St, Ste 400
Boise, ID 83702

DATED this 24th day of April, 2015.

GIVENS PURSLEY LLP

By 
Christopher H. Meyer

*Attorneys for Petitioner
Greater Boise Auditorium District*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of April, 2015, the foregoing was filed, served, and copied as follows:

DOCUMENT FILED:

Christopher D. Rich
Clerk of the Court
Fourth Judicial District
Ada County
200 W Front S
Boise, ID 83702

<input type="checkbox"/>	U. S. Mail
<input checked="" type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input type="checkbox"/>	Facsimile
<input type="checkbox"/>	E-mail

SERVICE COPIES TO:

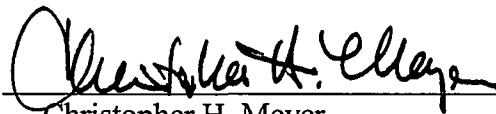
John L. Runft
Jon M. Steele
Runft & Steele Law Offices, PLLC
1020 W Main St, Ste 400
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jrunft@runftsteele.com

<input checked="" type="checkbox"/>	U. S. Mail
<input type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input type="checkbox"/>	Facsimile
<input checked="" type="checkbox"/>	E-mail

COURTESY COPIES TO:

Honorable Lynn G. Norton
District Judge
Fourth Judicial District Court
Ada County Courthouse
200 W Front St
Boise, ID 83702

<input type="checkbox"/>	U. S. Mail
<input checked="" type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input type="checkbox"/>	Facsimile
<input type="checkbox"/>	E-mail



Christopher H. Meyer

Appeal Office
5/12/15
Jg

MAY 12 2015

CHRISTOPHER D. RICH, Clerk
By **KATRINA HOLDEN**
DEPUTY

JOHN L. RUNFT (ISB # 1059)
JON M. STEELE (ISB # 1911)
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Attorneys for David Frazier

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

IN THE MATTER OF:

GREATER BOISE AUDITORIUM
DISTRICT,

Petitioner.

)
) Case No. CV OT 2014-23695
) Supreme Court Case No. 43074
)
) **MOTION FOR ADDITIONS TO THE**
) **CLERK'S RECORD ON APPEAL**
) **PURSUANT TO I.A.R. 28 AND 29**
)
)
)

COME NOW Respondent David Frazier, by and through his counsel of record John L. Runft, and moves the Court pursuant to I.A.R. Rules 28 and 29 for an Order for Additions to the Clerk's Record in the above-captioned matter to include the documents identified herein below for the reason that Respondent believes are important to a complete presentation of the issues on appeal, and which counsel for Respondent anticipates relying upon or referring to in written or oral presentations to the Idaho Supreme Court as follows:

(1) Whereas certain documents identified below by Respondent to be included in the Clerk's record by Petitioner-Appellant are included only as attachments to other documents, said documents are of such importance that they merit individual identification and inclusion in the record; and,

(2) Respondents' single exhibit, identified below, which was admitted for illustrative purposes at the February 25, 2015 hearing before this Court, was not requested by Petitioner-Appellant to be included in the Clerk's Record.

A. Requested Additions to the Clerk's Record On Appeal:

1. Respondent's *Answer to Petition for Judicial Confirmation*, filed January 14, 2015.
2. *Order Denying Petition for Judicial Confirmation*, filed March 23, 2015.
3. Respondent's (highlighted) exhibit introduced for illustrative purposes at the February 25, 2015 hearing on Petitioner's Request for Judicial Confirmation. This was the only exhibit introduced at said hearing.

B. I certify:

1. That the estimated fee for preparation of the additions to the clerk's record will be paid within the time required by rule after notice to Appellants of the amount of estimated fee; and,
 2. That service has been made upon all parties required to be served pursuant to Rule 20.
- Oral Argument is requested only if this Motion is opposed.

DATED this 8th day of May, 2015.

RUNFT & STEELE LAW OFFICES, PLLC

By: _____

JOHN L. RUNFT

Attorney for Respondent David Frazier

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 11th day of May 2015, a true and correct copy of the **MOTION FOR ADDITIONS TO THE CLERK'S RECORD ON APPEAL PURSUANT TO I.A.R. 28 AND 29** was served upon opposing counsel as follows:

Donald E. Knickrehm
Givens Pursley LLP
601 E. Bannock St.
Boise, ID 83702
F: (208) 388-1300

☒ U.S. Mail
☐ Personal Delivery
☒ Via Facsimile
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☒ U.S. Mail
☐ Personal Delivery
☒ Via Facsimile
☐ Via Email

RUNFT & STEELE LAW OFFICES, PLLC

By: _____

JOHN L. RUNFT

Attorney for Respondent David Frazier

JOHN L. RUNFT (ISB # 1059)
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Attorneys for David Frazier

NO. _____
FILED _____
A.M. _____ P.M. _____

MAY 28 2015

CHRISTOPHER D. RICH, Clerk
By TENILLE GRANT
DEPUTY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

IN THE MATTER OF:

GREATER BOISE AUDITORIUM
DISTRICT,

Petitioner.

)
) Case No. CV OT 2014-23695
) Supreme Court Case No. 43074
)
) **MOTION FOR FURTHER ADDITIONS TO**
) **THE CLERK'S RECORD ON APPEAL**
) **PURSUANT TO I.A.R. 19(c) AND 28(c)**
)
)
)

COME NOW Respondent David Frazier, by and through his counsel of record John L. Runft, and moves the Court pursuant to I.A.R. Rules 19(c) and 28(c) for an Order for further additions to the Clerk's Record in the above-captioned matter to include the documents identified herein below for the reason that Respondent believes are important to a complete presentation of the issues on appeal, and which counsel for Respondent anticipates relying upon, or referring to, in written or oral presentations to the Idaho Supreme Court as follows:

Respondents' exhibit consisting of multiple highlighted documents, identified below, which was admitted for illustrative purposes at the February 25, 2015 hearing before this Court, was not requested by Petitioner-Appellant to be included in the Clerk's Record.

MOTION FOR FURTHER ADDITIONS TO THE CLERK'S RECORD ON APPEAL PURSUANT TO
I.A.R. 28 AND 29 – Page 1

ORIGINAL

Requested Further Additions to the Clerk's Record On Appeal:

The exhibit admitted for illustrative purposes at the hearing consisting of the following documents containing passages highlighted in yellow utilized at argument:

- (1) Amended and Restated Master Development Agreement;
- (2) Purchase And Sale Agreement For Centre Facilities;
- (3) Amended And Restated Development Agreement;
- (4) Assignment And Assumption Agreement;
- (5) Lease Agreement (Annual Appropriation)

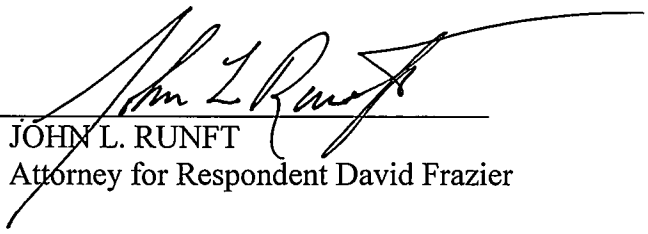
I hereby certify:

- (a) That the estimated fee for preparation of the additions to the clerk's record will be paid within the time required by rule after notice to Appellants of the amount of estimated fee; and,
- (b) That service of this motion has been made upon all parties required to be served pursuant to Rule 20, and that the parties have stipulated to the inclusion of this exhibit in the clerk's record on appeal.

DATED this 27th day of May, 2015.

RUNFT & STEELE LAW OFFICES, PLLC

By: _____


JOHN L. RUNFT

Attorney for Respondent David Frazier

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 28th day of May 2015, a true and correct copy of the foregoing **MOTION FOR ADDITION TO CLERK'S RECORD ON APPEAL PURSUANT TO I.A.R. 19(c) AND 28(c)**, was served upon opposing counsel as follows:

Chris Meyer
Pat Miller
Givens Pursley LLP
601 W. Bannock St.
Boise, ID 83702
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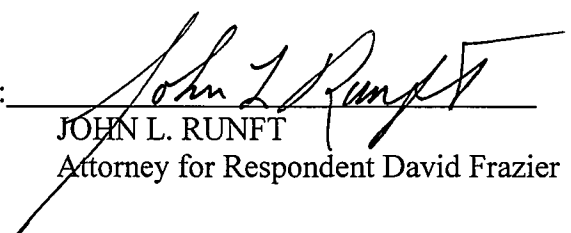
☒ US Mail
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877 W. Main St., Suite 1000
Boise, ID 83702-5883
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☒ US Mail
☐ Personal Delivery
☐ Facsimile

RUNFT & STEELE LAW OFFICES, PLLC

By: _____


JOHN L. RUNFT

Attorney for Respondent David Frazier

Exhibit 1

**LEASE AGREEMENT
(ANNUAL APPROPRIATION)**

Between

**URBAN RENEWAL AGENCY OF BOISE CITY, IDAHO
Aka Capital City Development Corporation**

And

**GREATER BOISE AUDITORIUM DISTRICT,
ADA COUNTY, STATE OF IDAHO**

Relating to

**Not to exceed \$23,500,000
Lease Revenue Note
(Centre Building Project)**

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Appendix A - Definitions

Exhibit A - Lease Payments
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**LEASE AGREEMENT
(ANNUAL APPROPRIATION)**

THIS LEASE AGREEMENT (ANNUAL APPROPRIATION) (the "Lease" or "Lease Agreement") is dated as of _____ (the "Effective Date") between the URBAN RENEWAL AGENCY OF BOISE CITY, IDAHO, aka Capital City Development Corporation, an urban renewal agency of the City of Boise, Idaho, organized and operating as an urban renewal agency pursuant to Chapters 20 and 29, Title 50, Idaho Code (the "Agency"), as lessor, and GREATER BOISE AUDITORIUM DISTRICT, ADA COUNTY, STATE OF IDAHO, a public body organized and operating as an auditorium district pursuant to Chapter 49, Title 67, Idaho Code (the "District"), as lessee.

WITNESSETH:

WHEREAS, the District is a public body organized and operating under the laws of the State of Idaho (the "State") as an auditorium district pursuant to Title 67, Chapter 49 of the Idaho Code (hereinafter the "Act"); and

WHEREAS, the Act authorizes the District to acquire, operate and maintain public convention and auditorium facilities and further authorizes the District to enter into lease arrangements relating to the construction and operation of its authorized facilities; and

WHEREAS, the Agency is a public body organized and operating as an urban renewal agency of the City of Boise City, Idaho, pursuant to Chapters 20 and 29, Title 50, Idaho Code, as amended (the "Urban Renewal Law"); and

WHEREAS, the Urban Renewal Law authorizes the Agency to carry out urban renewal projects within its area of operation and to issue a revenue note for the purpose of financing the cost of any such urban renewal project and to secure payment of such note as provided in the Section 50-2012 of the Urban Renewal Law; and

WHEREAS, Section 67-4912(f) of the Act authorizes the District to acquire, dispose of and encumber real and personal property and any interest therein, including leases and easements within the District; and

WHEREAS, Section 50-2015 of the Urban Renewal Law authorizes the District to dedicate, sell, convey or lease any of its respective interests in any property to the Agency, to incur the entire expense of any public improvements for an urban renewal project, and take such further actions as are necessary to aid in or cooperate in the planning or carrying out of an urban renewal plan and related activities; and

WHEREAS, Section 50-2015 of the Urban Renewal Law further authorizes the District and the Agency to enter into any such sale, conveyance, lease, or agreement without appraisal, public notice, advertisement, or public bidding; and

WHEREAS, the District intends to expand and improve the "Boise Centre," its existing convention center and public event facilities, in downtown Boise (the "Project") to be located within the boundaries of both the District and the Agency; and

WHEREAS, as part of the Project the District intends to (i) construct a new ballroom facility, related kitchen and ancillary facilities, and (ii) purchase of related furniture and equipment. The new ballroom facility and related kitchen are located in a new building being constructed by KC Gardner Company, L.C. (the "Developer"), who has acquired title to parcel to the south of the existing U.S. Bank office tower in close proximity to the Boise Centre. The parcel is referred to herein as the "South Parcel;" and

WHEREAS, the District and the Developer have entered into an Amended and Restated Master Development Agreement (the "Gardner MDA"), whereby the Developer agreed to develop and build to suit the new ballroom facility, related kitchen and ancillary facilities within a new building to be constructed on the South Parcel, such building referred to herein as the "Centre Building;" and

WHEREAS, the Centre Building is subject to a condominium regime as set forth in the Condominium Documents. Condominium units containing the above described facilities will be sold by the Developer to the District; and

WHEREAS, the District is seeking financing for the purchase of the condominium units containing the new ballroom facility, the related kitchen, and ancillary facilities in the Centre Building, along with related soft costs and equipment, which has an estimated cost of \$21,236,400 (collectively, the "Financed Project") and related reserves and financing costs; and

WHEREAS, the Agency has determined, at the request of the District, to issue a revenue note or similar instrument to provide funds to finance the purchase of the Financed Project and related reserves and financing costs to be undertaken by the District and the Agency, which note shall be designated the "Urban Renewal Agency of Boise City, Idaho, aka Capital City Development Corporation Lease Revenue Note (Centre Building Project)," in an aggregate principal amount up to \$23,500,000 (the "Note"), under and pursuant to a Note Purchase Agreement (the "Note Purchase Agreement") between the Agency and the Bank; and

WHEREAS, the District and the Agency intend for the Agency to purchase the Financed Project with the proceeds of the Note; and

WHEREAS, the Note Purchase Agreement provides the obligation of the purchaser of the Note to provide an acceptable letter or certificate indicating that the purchaser is experienced in transaction such as those related to the Note and that the purchaser is knowledgeable and fully capable of independently evaluating the risk involved in investing in the Note. Further, should the purchaser determine, subsequent to its purchase of the Note, to sell, assign, or transfer the Note, any such sale, assignment or transfer shall be made under those same conditions constituting what is referred to as a "traveling letter."

WHEREAS, the District and the Agency hereby agree to enter into this Lease under the terms of which (i) the Agency will purchase the Financed Project from the Developer and lease it

to the District; and (ii) the District will pledge Tax Receipts, subject to annual appropriation, to pay Rent to the Agency as set forth in Section 5.3; and

WHEREAS, pursuant to the Note Purchase Agreement, the Note shall be secured by (i) the Agency's interest in the Lease and Rent due thereunder; and (ii) the grant of a first lien (subject to the District's Option to Purchase) in the Financed Project pursuant to a Deed of Trust and Assignment of Rents in a form agreed to by the Agency and the Bank, until the Note has been fully repaid; and

WHEREAS, the issuance and delivery of the Note and the execution and delivery of this Lease have been in all respects duly and validly authorized by a resolution adopted by the Agency, and all things necessary to make this Lease and the Note, when executed and authenticated by the Agency, valid and binding legal obligations of the Agency have been done; and

WHEREAS, the execution and delivery of this Lease Agreement has been duly and validly authorized by a resolution adopted by the District, and all things necessary to make this Lease Agreement, when executed and authenticated by the District, a valid and binding legal obligation of the District and the pledge of Tax Receipts, subject to annual appropriation, to pay Rent made hereunder to the Agency and thereafter pledged by the Agency to the payment of the principal of and interest on the Note, has been done; and

NOW, THEREFORE, for and in consideration of the Financed Project and the mutual covenants hereinafter contained, the parties hereto formally covenant, agree and bind themselves as follows:

ARTICLE I DEFINITIONS

Section 1.1 Definitions. Except where the context indicates otherwise, capitalized terms used herein shall have the respective meanings set forth on Appendix A hereto.

ARTICLE II REPRESENTATIONS

Section 2.1 Representations by the District. Where the term or phrase "knowledge," "to the best of its knowledge" and/or "to the knowledge of the District" is used in this Section 2.1, such term or phrase refers to the actual knowledge of the current executive director and officers of the District's Board of Directors. The District hereby represents and warrants to the Agency that:

(a) The District is an independent public body politic and corporate of the State, is duly organized and existing under the laws of the State, is authorized to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder, and has duly authorized the execution and delivery of this Lease.

(b) Neither the execution and delivery of this Lease, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and

conditions of this Lease, conflicts with or results in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which it is bound or constitutes a default under any of the foregoing or results in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the District under the terms of any instrument or agreement.

(c) The financing of the Project is in furtherance of the District's governmental purposes and will enable the District to provide convention and auditorium facilities.

(d) The District has not obtained other financing for the Financed Project, except as has been disclosed in writing to the Agency.

(e) There is no fact that materially adversely affects or that will materially adversely affect (so far as the District can reasonably foresee) the properties, activities, prospects or condition (financial or otherwise) of the District or the ability of the District to make all payments required and otherwise perform its obligations under this Lease.

(f) There are no proceedings pending, or to the knowledge of the District threatened, against or affecting the District in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect the properties, activities, prospects or condition (financial or otherwise) of the District or the ability of the District to make all payments required and otherwise perform its obligations under this Lease.

(g) The consummation of the transactions provided for in this Lease and compliance by the District with the provisions of this Lease are within the District's lawful powers and have been duly authorized by all necessary action on the part of the District.

(h) No event has occurred and no condition exists that, upon execution of this Lease, would constitute an event of default by the District hereunder. The District is not in violation in any material respect, and has not received notice of any claimed violation, of any term of any agreement or other instrument to which it is a party or by which it or its property may be bound.

(i) To the best of its knowledge, the District is in compliance with all laws, ordinances, governmental rules and regulations to which it is subject, and has obtained all licenses, permits, franchises or other governmental authorizations necessary for the ownership of its property or to the conduct of its activities.

(j) The District has not sold and does not intend to sell or enter into any other obligations within fourteen days before or after the date on which the Note will be sold that were or will be (i) sold pursuant to the same plan of financing as the Note and (ii) reasonably expected to be paid from substantially the same source of funds as the Note.

(k) (i) Neither the District nor, to the knowledge of the District, any other person, has stored, disposed or released in, on or about the Financed Project any Hazardous Substances the removal or remediation of which is or could be required, or the maintenance of which is prohibited or penalized, by any applicable Environmental Laws, and any such real property is free from all such Hazardous Substances; and (ii) the District has not given any release or waiver of liability that would waive or impair any claim based on Hazardous Substances to (a) a

prior owner or occupant of the Financed Project, or (b) any party who may be potentially responsible for the presence of Hazardous Substances on any such real property.

Section 2.2 Representations and Warranties of the Agency. Where the term or phrase "knowledge," "to the best of its knowledge" and/or "to the knowledge of the Agency" is used in this Section 2.2, such term or phrase refers to the actual knowledge of the current executive director and officers of the Board of Commissioners of the Agency. The Agency hereby represents and warrants to the District that:

(a) The Agency is an independent public body politic and corporate of the State of Idaho, is duly organized and existing under the laws of the State of Idaho, is authorized pursuant to the Urban Renewal Law to enter into the transactions contemplated by this Lease Agreement and to carry out its obligations hereunder, and has duly authorized the execution and delivery of this Lease Agreement.

(b) Neither the execution and delivery of this Lease Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Lease Agreement, conflicts with or results in a breach of any of the terms, conditions, provisions of any restriction or any agreement or instrument to which the Agency is now a party or by which it is bound or constitutes a default under any of the foregoing or results in the creation or imposition of any prohibited lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the Agency under the terms of any instrument or agreement.

(c) The Agency has not made and will not make any contract or arrangement of any kind, the performance of which by either party would give rise to a lien (other than a Permitted Encumbrance) on the Financed Project.

(d) Neither the Agency nor, to the best knowledge of the Agency, any other person, has stored, disposed or released in, on or about the Financed Project any Hazardous Substances the removal or remediation of which is or could be required, or the maintenance of which is prohibited or penalized, by any applicable Environmental Laws, and, to the best knowledge of the Agency all such real property is free from all such Hazardous Substances.

ARTICLE III PURCHASE OF FINANCED PROJECT/DEMISING CLAUSE

Section 3.1 Purchase of Financed Project. As of the Effective Date, the District, pursuant to the Assignment and Assumption Agreement, has assigned the District's right to purchase the Financed Project under the Purchase Agreement to the Agency. After issuance of the Note pursuant to Article IV hereof, and receipt of written consent from the District to proceed with the purchase of the Financed Project, the Agency shall, solely using funds from the Acquisition Fund, purchase the Financed Project from the Developer pursuant to the terms and conditions of the Purchase Agreement and the Assignment and Assumption Agreement. The closing of the purchase of the Financed Project shall take place on the date set forth in the Purchase Agreement for such closing, unless otherwise directed by the District. The Agency will

retain title to the Financed Project until such time as the District may have exercised its Option to Purchase the Financed Project pursuant to Article XI hereof.

Section 3.2 Demise of the Financed Project. Upon the closing of the purchase of the Financed Project by the Agency (the "Commencement Date"), the Agency leases to the District and the District leases from the Agency, the Financed Project, in accordance with the provisions of this Lease, subject to Permitted Encumbrances. Subject to the terms and conditions of this Lease and the Condominium Documents, the District shall be permitted to use the Financed Project for any lawful purpose.

Section 3.3 No Obligation to Renew or Exercise Option to Purchase. The Agency acknowledges and recognizes that this Lease will terminate at the end of the Initial Term or any applicable Renewal Term in the event that sufficient funds are not budgeted by the District specifically with respect to this Lease to pay Rent during the next occurring Renewal Term, and that the act of budgeting funds is a legislative act and, as such, is solely within the discretion of the District Board. Additionally, nothing in this Lease shall be construed to require the District to renew the Lease or to exercise its Option to Purchase the Financed Project as provided in Article XI hereof.

ARTICLE IV ISSUANCE OF THE NOTE

Section 4.1 Agreement to Issue Note. In order to provide funds to purchase the Financed Project and fund the Debt Service Reserve Account and Costs of Issuance, the Agency will, pursuant to the Note Purchase Agreement, sell and cause to be delivered the Note to the initial purchasers thereof, no later than the closing date for the purchase of the Financed Project as set forth in the Purchase Agreement, and will deposit the Net Note Proceeds as follows:

- (a) In the Debt Service Reserve Account, a sum equal to the Reserve Requirement with respect to the Note;
- (b) In the Costs of Issuance Fund, a sum equal to the Costs of Issuance of the Note; and
- (c) In the Acquisition Fund, and the accounts created therein, the balance of the Net Note Proceeds.

Section 4.2 Disbursements from the Acquisition Fund. The Agency shall, upon satisfaction of the requirements in Section 3.1 direct payment from the Acquisition Fund to acquire the Financed Project.

Section 4.3 Costs of Issuance; Disbursements from Costs of Issuance Fund. Upon closing of the Note, Costs of Issuance shall be paid from the Costs of Issuance Fund. Each such payment shall be made upon receipt by the Bank of a requisition in the form required pursuant to the Note Purchase Agreement.

Section 4.4 Cooperation of the Parties. The District and the Agency agree to cooperate with each other in furnishing to the Bank the requisition required in Section 4.3 hereof.

Section 4.5 Investment of Moneys. Any moneys held as a part of the funds created in the Note Purchase Agreement shall be invested in investment securities in accordance with applicable law. The District shall provide the Agency with written notice setting forth the manner in which the funds shall be invested, and the Agency shall direct the Bank to so invest the funds as soon as practicable. The Agency shall send to the District a copy of any certificate sent to the Bank directing investment of the funds.

Section 4.6 Tax Covenant. The District covenants for the benefit of the Bank and the Agency that during the Lease Term it will not take any action or omit to take any action with respect to the Note, the proceeds thereof, any other funds of the District or any improvements financed with the proceeds of the Note if such action or omission (i) would cause the interest on the Note to be included in gross income for federal income tax purposes under Section 103 of the Code, or (ii) would cause interest on the Note to lose its exclusion from State income taxation under State law.

ARTICLE V

EFFECTIVE DATE OF THIS AGREEMENT; DURATION OF LEASE TERM; EVENT OF NONRENEWAL; RENTAL PROVISIONS; NO SURVIVAL

Section 5.1 Effective Date of this Agreement; Duration of Lease Term; Event of Nonrenewal.

(a) This Lease is effective, and is a binding obligation of both the District and the Agency, as of the Effective Date. The Initial Term will begin on the Commencement Date as provided in Section 3.2 and will end on the November 30 following the Commencement Date, or on such sooner date as the Note shall have been fully paid and retired or provision for such payment shall have been made as provided in the Note Purchase Agreement and all other expenses or sums to which the Agency and the Bank are entitled, both under this Lease and the Note Purchase Agreement, have been paid.

(b) At any time during the Initial Term and during each Renewal Term thereafter, the District may, in its sole discretion, renew this Lease for the next subsequent Renewal Term by budgeting funds to pay Rent for such Renewal Term and by giving Notice of Intent to Renew to the Agency. The Notice of Intent to Renew shall be accompanied by a certified copy of the resolution or other official action of the District Board adopting its budget which includes the expenditure of funds for Rent for the Renewal Term. In the event the Agency shall not have received the Notice of Intent to Renew by November 1 of any year, the Agency will notify the District of such non-receipt, and the District shall then have until November 15 to deliver to the Agency its Notice of Intent to Renew.

(c) If the District does not deliver the Notice of Intent to Renew by November 15 of any year, or if the District shall at any time notify the Agency that the District has elected to not renew this Lease for an additional Renewal Term, an Event of Nonrenewal shall be deemed to have occurred. Upon an Event of Nonrenewal, the Lease shall terminate on November 30 of the then current year and, except for the provisions of Section 8.12 herein, no provision of the Lease shall survive termination.

(d) Subject to the preceding sections, this Lease may be renewed for a total of twenty-four (24) consecutive one-year Renewal Terms commencing on December 1 and ending on November 30 of each following calendar year.

(e) It is the intention of the District Board that the decision to renew or not to renew this Lease shall be made solely by the District Board and not by any other District officer.

Section 5.2 Delivery and Acceptance of Possession. The Agency shall deliver to the District sole and exclusive possession of the Financed Project (subject to the right of the Agency to enter thereon and have access thereto pursuant to Section 8.1 hereof) on the Commencement Date, and the District agrees to accept possession of the Financed Project upon such date. The Agency covenants and agrees that after the Commencement Date it will not take any action, other than pursuant to Article X of this Lease and the Note Purchase Agreement to prevent the District from having quiet and peaceable possession and enjoyment of the Financed Project during the Lease Term (subject to the right of the Agency to enter thereon and have access thereto pursuant to Section 8.1 hereof) and will cooperate with the District for that purpose.

Section 5.3 Rent.

The obligation of the District to pay Lease Payments, Prepayments, Debt Service Reserve Payments, Rebate Fund Payments and Occupancy Expenses (collectively, "Rent") begins on the Commencement Date and extends only through the Initial Term and any Renewal Term, if the Lease is so renewed at the sole option of the District pursuant to Section 5.1. The District hereby pledges, and grants a senior lien on, Tax Receipts to the payment of Rent during the Lease Term. There is no obligation to pay Rent or any other amounts for any period following an Event of Nonrenewal, and the District has no ongoing obligations for any period following an Event of Nonrenewal, except the obligation to make payments from the Lease Contingency Fund pursuant to Section 8.12. Subject to the foregoing, the District shall pay Rent during the Lease Term as provided in this Section 5.3:

(a) Lease Payments. On or before the Lease Payment Date, and subject to Section 5.3(b), the District shall promptly make payments into the Lease Payment Fund as provided on the schedule of Lease Payments attached as "Exhibit A" to this Lease (the "Lease Payments"), which payments shall be transferred to the Debt Service Account pursuant to the terms of the Note Purchase Agreement, provided however that (i) any amount in the Debt Service Account on the Lease Payment Date in excess of the aggregate amount then required to be held pursuant to this Section shall be credited against the Lease Payments due on such date, and (ii) Exhibit A shall be automatically modified, and Lease Payments reduced, to reflect reduced amounts of interest and principal that will become due on the Note as a result of a partial prepayment or defeasance of the Note pursuant to the Note Purchase Agreement and (b) below. The Agency shall provide, or cause to be provided, to the District written notice at least fifteen (15) calendar days prior to the Lease Payment Date specifying (i) the amount of monies in the Debt Service Account, and (ii) the amount the District must deposit in the Lease Payment Fund as Lease Payments. If on the Lease Payment Date the amount held by the Agency in the Debt Service Account is insufficient to make the required payments of principal and interest on the Note, the District shall forthwith pay such deficiency as Rent hereunder to the Agency for deposit in the Lease Payment Fund.

(b) Prepayments. On or before the fifth (5th) day next preceding any prepayment date for which a notice of prepayment has been given by the District at the District's sole option pursuant to the Note Purchase Agreement, the District shall pay as Rent for deposit in the Lease Payment Fund an amount of money which, together with other moneys available therefor in the Debt Service Account, is sufficient to pay the interest and principal on the Note called for prepayment (a "Prepayment"). Upon such payment, Exhibit A hereto shall be revised to reflect such prepayment of the Note.

(c) Debt Service Reserve Payments. Upon the issuance of the Note, the Bank will establish a Debt Service Reserve Account equal to the Reserve Requirement. During the Lease Term, the District shall maintain the Reserve Requirement in the Debt Service Account. Accordingly, if such moneys are transferred from the Debt Service Reserve Account to the Debt Service Account during the Lease Term because of a deficiency therein, the District agrees to pay any amounts required to cause the amount in the Debt Service Reserve Account to equal the Reserve Requirement (the "Debt Service Reserve Payments"). In an Event of Nonrenewal, all moneys in the Debt Service Reserve Account shall be available for application to the Note.

(d) Rebate Fund Payments. The District agrees to pay to the Agency any amount required to be paid to the United States of America pursuant to Section 148(f) of the Code to the extent amounts on deposit in the Rebate Fund are insufficient for such purpose ("Rebate Fund Payments").

(e) Occupancy Expenses. This Lease is intended to be a net lease to the Agency, it being understood that Agency shall receive all Rent payments set forth in the foregoing paragraphs of this Section 5.3 free and clear of any and all impositions, encumbrances, charges, obligations or expenses of any nature whatsoever in connection with the ownership and operation of the Financed Project, including but not limited to those items described in Article VI hereof. Accordingly, the District shall pay, when due, to the parties respectively entitled thereto all occupancy expenses of the Financed Project typically paid by the tenant in a net lease. The District shall pay Agency Fees and Expenses and Bank Fees and Expenses within fifteen (15) days following receipt from the Agency or the Bank, as applicable, of a bill therefor. All amounts required to be paid by the District pursuant to this Section 5.3(e) shall constitute "Occupancy Expenses."

The District may, at its expense, in good faith, contest any such Occupancy Expenses and, in the event of any such contest, may permit such charges contested to remain unpaid during the period of such contest and any appeal therefrom unless the Agency or the Bank shall notify the District that by nonpayment of any such items the Financed Project will be materially endangered or will be subject to loss or forfeiture, in which case, such charges shall be paid promptly or secured by posting a bond with the Agency or the Bank in form satisfactory to the Agency or the Bank. In the event that the District shall fail to pay any of the foregoing items required by this Section to be paid by the District, the Agency or the Bank may (but shall be under no obligation to) pay the same, and any amounts so advanced therefor by the Agency or the Bank shall become an additional obligation of the District, payable on demand, together with interest thereon at the Advance Rate.

(f) Failure to Make Payments. During the Lease Term, in the event the District should fail to make any payment of Rent when due, the item or installment in default shall continue as an obligation of the District until the amount in default shall have been fully paid, and the District agrees to pay the same with interest thereon at the Advance Rate.

Section 5.4 Payees of Payments. The Lease Payments, Prepayments and the Debt Service Reserve Payments shall be paid directly to the Bank and shall be deposited in the Lease Payment Fund. The payments to be made pursuant to Section 5.3(d) hereof shall be paid to the Bank for deposit in the Rebate Fund. The Occupancy Expenses to be paid to the Agency and the Bank shall be paid directly to the Agency or the Bank, respectively, for their own use. All other Occupancy Expenses shall be made to the appropriate payee of such payment.

ARTICLE VI MAINTENANCE, CHARGES AND INSURANCE

Section 6.1 Maintenance and Modifications of the Financed Project. During the Lease Term, the District agrees that it will at its own expense (i) keep the Financed Project in as reasonably safe condition as its operations permit, (ii) maintain a level of quality and operation of the Financed Project that is at least comparable to the level of quality of character and operation of similar facilities, and (iii) keep the Financed Project in good repair and in good operating condition, making from time to time all necessary repairs thereto (including external and structural repairs) and renewals and replacements thereof. The District may also at its own expense, and subject to the requirements of the Condominium Documents and upon providing written notice to the Agency, make from time to time any additions, modifications or improvements to the Financed Project it may deem desirable for its purposes that do not adversely affect the structural integrity of the building or substantially reduce the value or impair the character of the Financed Project; provided that all such additions, modifications and improvements to the Financed Project shall comply with all applicable building code regulations and ordinances. All such additions, modifications and improvements made by the District shall become a part of the Financed Project. Other than the Permitted Encumbrances, the District will not permit any mechanics' lien, security interest or other encumbrance to be established or to remain against the Financed Project for labor or materials furnished; provided, that if the District first notifies the Agency of its intention to do so, the District may in good faith contest any mechanics' or other liens filed or established against the Financed Project. In such event, the District may permit the items contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless the Agency notifies the District that nonpayment of any such items will materially endanger the interests of the Agency in the Lease, or that the Financed Project or any part thereof will be subject to loss or forfeiture, in which event the District shall promptly pay and cause to be satisfied and discharged all such liens.

Section 6.2 Insurance Required. During the Lease Term, the District and the Agency agree to confer and work together to ensure the Financed Project and the parties are adequately insured. During the Lease Term, the District agrees to insure the Financed Project with insurance companies licensed to do business in the State including all-risk property coverage equal to 100% replacement-cost basis and all other insurance in such amounts and in such manner and against such loss, damage and liability, including liability to third parties, as are customary for facilities of similar function and scope, taking into account liability limits

provided by State law and any requirements of the Condominium Documents, and to pay the premiums with respect thereto. Such policies shall be claims occurred policies and shall include public officials liability coverage.

All policies maintained pursuant to this Section 6.2 (except for workmen's compensation insurance) shall name the District and the Agency and the Bank, as insureds as their respective interests may appear. Such policies or certificates of insurance shall (i) provide that any losses shall be payable notwithstanding any act or negligence of the District or the Agency, and (ii) provide that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least 30 days after receipt of written notice thereof by the District, the Agency, and the Bank. Upon recommendations of an Insurance Consultant who is familiar with the Financed Project and the provisions of this Lease, the District may agree to any reduction, increase or modification, including providing for coverage of additional perils, of the insurance requirements hereunder to such as are adequate and customary for similar institutions and similar projects of like size and operation, and is reasonably obtainable. The District shall provide written notice to the Agency of any such reduction, increase or modification at least 30 days prior to the effective date of such reduction, increase or modification.

The District will deliver to the Agency promptly upon request by the Bank, but in any case within 60 days after the end of each fiscal year during the Lease Term, a certificate of an Authorized Representative of the District setting forth the particulars as to all insurance policies maintained by the District pursuant to this Section 6.2 and certifying that such insurance policies comply with the provisions of this Section 6.2 and that all premiums then due thereon have been paid.

Section 6.3 Application of Net Proceeds of Insurance. The Net Proceeds of any insurance with respect to the Financed Project carried pursuant to Section 6.2 hereof shall be applied as provided in Article VII hereof.

Section 6.4 Advances by the Agency or the Bank. During the Lease Term, in the event the District shall fail to maintain the full insurance coverage required by this Lease or shall fail to keep the Financed Project in as reasonably safe condition as its operating condition will permit, or shall fail to keep the Financed Project in good repair and good operating condition, the Agency or the Bank may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same or make the required repairs, renewals and replacements; and all amounts advanced therefor by the Agency or the Bank shall become an additional obligation of the District to the Agency or the Bank, which amounts, together with interest thereon at the Advance Rate, the District agrees to pay on demand.

ARTICLE VII DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.1 Damage and Destruction. During the Lease Term, if the Financed Project is destroyed or damaged by fire or other casualty to such extent that the claim for loss under the insurance policies resulting from such destruction or damage is less than \$500,000, the Net Proceeds of insurance shall be paid to the District and shall be held or used by the District for such purposes as the District may deem appropriate. The District shall not by reason of the

payment with respect to such destruction or damage be entitled to any reimbursement from the Agency or the Bank or any postponement, abatement or diminution of the Rent.

If the Financed Project is destroyed or damaged (in whole or in part) by fire or other casualty to such extent that the claim for loss under the insurance policies resulting from such destruction or damage is \$500,000 or more, the District shall promptly give written notice thereof to the Agency and the Bank. All Net Proceeds of insurance resulting from such claims for losses of \$500,000 or more shall be paid to and held by the Bank in a separate trust account, to be applied in one or more of the following ways as shall be directed in writing by the District:

(a) The District may promptly repair, rebuild or restore the facilities damaged or destroyed to substantially the same value and condition as they existed prior to such damage or destruction, with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the District, and will not impair operating unity, or the value of the Financed Project, and the Bank will apply so much as may be necessary of the Net Proceeds of such insurance to payment of the costs of such repair, rebuilding or restoration, either on completion thereof or as the work progresses, as certified by the District.

Any balance of such Net Proceeds remaining after payment of all the costs of such repair, rebuilding or restoration shall be transferred by the Bank, at the written request of the District, (A) to the Debt Service Account and applied to the payment of the principal of the Note on the next payment date or dates thereof, or (B) to the District to be applied to other capital costs.

(b) Alternatively, at the option of the District, all Net Proceeds of insurance resulting from claims for losses specified in the first sentence of the preceding paragraph of \$500,000 or more may be used to prepay the Note; provided (1) the Note shall be prepaid in whole in accordance with the Note Purchase Agreement upon exercise of the Option to Purchase, or (2) in the event that less than the total amount outstanding under the Note is to be prepaid, the District shall furnish to the Agency a Consulting Architect's Certificate stating (i) that the portion of the Financed Project damaged or destroyed is not essential to the District's use or occupancy of the Financed Project, or (ii) that the Financed Project has been restored to a condition substantially equivalent to its value and condition prior to the damage or destruction. Any balance of Net Proceeds after prepayment of the Note in whole shall be transferred to the District to be applied to other capital costs.

Section 7.2 Condemnation. In the event that title to, or the temporary use of, the Financed Project or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, the District shall be obligated during the Lease Term to continue to pay Rent. In the event the Net Proceeds from any award made in such eminent domain proceedings is less than \$500,000, all of such Net Proceeds shall be paid to the District and shall be held or used by the District for such purposes as the District may deem appropriate. In the event the Net Proceeds from any award in such eminent domain proceedings is \$500,000 or more, the District will cause the Net Proceeds received by it from such award to be paid to and held by the Bank in a separate trust account, to be applied in one or more of the following ways as shall be directed in writing by the District:

(a) The restoration of the Financed Project to substantially the same value and condition as it existed prior to such condemnation; or

(b) The prepayment of the Note; provided that no part of any such condemnation award may be applied for such prepayment unless (1) the Note shall be prepaid in whole in accordance with the Note Purchase Agreement upon exercise of the Option to Purchase, or (2) in the event that less than the total amount outstanding under the Note is to be prepaid, the District shall furnish to the Agency a Consulting Architect's Certificate stating (i) that the portion of the Financed Project taken by such condemnation proceedings is not essential to the District's use or occupancy of the Financed Project or (ii) that the Financed Project has been restored to a condition substantially equivalent to its value and condition prior to the taking by such condemnation proceedings.

In the event the District elects the option set forth in subparagraph (a) above, the Bank will apply so much as may be necessary of the Net Proceeds of such condemnation award to payment of the costs of such restoration, acquisition or construction, either on completion or as the work progresses.

In the event the Net Proceeds from any award made in any eminent domain proceedings is \$500,000 or more, within 30 days from the date of a final order in any eminent domain proceedings granting condemnation, the District shall direct the Agency in writing which of the ways specified in this Section 7.2 the District elects to have the condemnation award applied. Any balance of the Net Proceeds of the award in such eminent domain proceedings remaining after payment of all the costs of such restoration, acquisition, construction or prepayment of the Note shall be transferred to the Debt Service Account to be applied by the Bank to the payment of the principal of the Note on the next payment date or dates thereof, or in the event of prepayment of the Note in whole, shall be transferred to the District to be applied to other capital costs.

Section 7.3 No Liens. During the Lease Term, all items acquired in the repair, rebuilding or restoration of the Financed Project shall be deemed a part of the Financed Project. The District shall confirm the interests of the Agency in order to put the Agency in a position equivalent to its positions prior to the damage, destruction or condemnation. The District hereby warrants such acquired property shall have no liens or encumbrances other than Permitted Encumbrances, subject to the District's right to contest any such liens or encumbrances pursuant to Section 6.1.

Section 7.4 Investment of Net Proceeds. Any Net Proceeds of insurance or a condemnation award held by the Bank pending restoration, repair or rebuilding of the Financed Project shall be invested in Investment Securities. The earnings or profits on such investments shall be considered part of the Net Proceeds except to the extent required to be deposited into the Rebate Fund.

ARTICLE VIII SPECIAL COVENANTS AND PROVISIONS

Section 8.1 Right of Access. During the Lease Term, the District agrees that the Agency and the Bank and any of their duly authorized agents shall have the right, during the District's regular business hours and after providing at least 48 hours prior written notice, to enter, examine and inspect the Financed Project for any reasonable purpose. The District further agrees that, if the District is in default under this Lease, the Agency and the Bank and their duly authorized agents shall have such rights of access to the Financed Project as may be reasonably necessary for the proper maintenance thereof.

Section 8.2 No Discrimination. During the Lease Term, the District will lawfully operate the Financed Project as part of its convention and meeting facility, free of unlawful discrimination.

Section 8.3 District and Agency to Maintain Existence; Restrictions on Transfer. During the Lease Term, neither the Agency nor the District will reorganize or merge with any other entity, nor will the Agency sell or otherwise dispose of any part of the Financed Project without the prior written consent of the District and the Bank. Neither the Agency nor the District will take any action to cause its existence to be abolished. The Financed Project shall be leased by the District and operated by the District and no other person or entity shall be responsible for such management, except as provided in the Condominium Documents, and otherwise with the prior written consent of the Agency. Any agreement with an independent management firm to operate or provide management services to the District shall require the prior written approval of the Agency. No disposition of the Financed Project or agreement with regard to the Financed Project shall be approved if such disposition or agreement will adversely affect the validity of the Note, or the exclusion from gross income of interest on the Note for federal income tax purposes.

Section 8.4 Environmental Covenants.

(1) During the Lease Term, the District will not cause or permit any Hazardous Substance to be brought upon, kept, used or generated by the District, its agents, employees, contractors or invitees, in the operation and occupation of the Financed Project, unless the use or generation of the Hazardous Substance is necessary for the prudent operation thereof and no functional and reasonably economic nonhazardous substance or process which does not generate Hazardous Substances can be used in place of the Hazardous Substance or the process which generates the Hazardous Substances.

(2) During the Lease Term, the District will, with respect to the Financed Project, at all times and in all respects comply with all Environmental Laws. The District's duty of compliance with Environmental Laws includes, without limitation, the duty to undertake the following specific actions: (i) the District will, at its own expense, procure, maintain in effect, and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required by all Environmental Laws, including, without limitation, permits required for discharge of (appropriately

treated) Hazardous Substances into the ambient air or any sanitary sewers serving the Financed Project; and (ii) except as discharged into the ambient air or a sanitary sewer in strict compliance with all applicable Environmental Laws, any and all Hazardous Substances to be treated and/or disposed by the District from the Financed Project will be removed and transported solely by duly licensed transporters to a duly licensed treatment and/or disposal facility for final treatment and/or disposal. (except when applicable Environmental Laws permit on-site treatment or disposal in a sanitary landfill).

Section 8.5 Further Assurances. During the Lease Term, the District and the Agency agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the intention of or facilitating the performance of this Lease.

Section 8.6 Authority of Authorized Representative of the District. Whenever under the provisions of this Lease the approval of the District is required, or the Agency is required to take some action at the request of the District, such approval or such request shall be made by the Authorized Representative of the District unless otherwise specified in this Lease and the Bank or the Agency shall be authorized to act on any such approval or request and the District shall have no complaint against the Agency as a result of any such action taken.

Section 8.7 Covenant as to Litigation. During the Lease Term, the District and the Agency shall keep each other fully informed of any threats, claims or pending litigation relating to this Lease.

Section 8.8 No Third-Party Beneficiaries. This Lease is made for the sole benefit of the District and the Agency, and no other person or persons shall have rights or remedies hereunder except to the extent specifically provided herein and in the Note Purchase Agreement. The District and the Agency shall owe no duty to any claimant for labor performed or material furnished with respect to the Financed Project.

Section 8.9 Continuing Disclosure. During the Lease Term, the District and the Agency agree to execute and comply with the terms of any Continuing Disclosure Undertaking that may be required with respect to the Note.

Section 8.10 Additional Debt of the District. During the Lease Term, the District may not grant a senior lien on the Tax Receipts. In addition, the District may not provide a parity pledge of its Tax Receipts to any other obligation unless the most recently audited financial statements of the District provide Tax Receipts equal to at least 1.75 times maximum annual debt service coverage of the combined annual obligations under the Lease, any other outstanding parity obligations and the annual payments for the proposed obligations and no material adverse impairment of the cash flow is known or forecast.

Nothing herein contained shall prevent the District from issuing obligations which are a charge upon the Tax Receipts junior or inferior to the payment obligations required by this Lease.

Section 8.11 Financing Statements. During the Lease Term, the District shall cause financing statements and continuation statements relating to the Tax Receipts to be filed, in such manner and at such places as may be required by law to fully protect the security of the Bank and the right, title and interest of the Agency and the Bank in and to the Tax Receipts or any part thereof. From time to time, the Agency may, but shall not be required to, obtain an opinion of counsel setting forth what, if any, actions by the District or Agency should be taken to preserve such security. The District shall execute or cause to be executed any and all further instruments as may be required by law or as shall reasonably be requested by the Agency or the Bank, and shall furnish satisfactory evidence to the Agency and the Bank of filing and refiling of such instruments and of every additional instrument that shall be necessary to preserve the security of the Bank and the right, title and interest of the Agency and the Bank in and to the Tax Receipts or any part thereof until the principal of and interest on the Note issued under the Note Purchase Agreement shall have been paid. The Agency shall execute or join in the execution of any such further or additional instruments, if necessary, and file or join in the filing thereof at such time or times and in such place or places as will preserve such security and right, title and interest until the aforesaid principal and interest shall have been paid. In the execution or filing of any such further additional instruments, the Agency may, but shall not be required to, obtain an opinion of counsel on which the Agency shall be entitled to rely. Financing statements shall be terminated upon an Event of Nonrenewal.

Section 8.12 Lease Contingency Fund. The District hereby agrees to presently budget and commit \$350,000 to be held by the District in a fund to be called the "Lease Contingency Fund."

(a) \$250,000 of the Lease Contingency Fund shall be held as the sole source of payment for reasonable attorneys' fees, costs and expenses incurred by the Agency as a result of any claims for bodily injury or property damage, other than property insured, made against the Agency that arise from the negligent acts or omissions of the District, and to reimburse the Agency for the cost of any increased insurance premiums incurred by the Agency resulting solely from its acquisition of the Financed Project or issuance of the Note. The Agency and the District agree to seek and use insurance proceeds prior to use of the Lease Contingency Fund.

(b) \$100,000 of the Lease Contingency Fund shall be held as the sole source of payment for reasonable fees, costs, expenses, losses and liabilities of the Bank relating specifically to the Financed Project.

(c) The Agency and the Bank shall provide to the District evidence of all expenses to be paid from the Lease Contingency Fund. The District shall pay all such amounts owed to the Agency or the Bank, as applicable, within thirty (30) days of evidence of such expenses being submitted unless the District disputes such expenses. In the event of a dispute, the Executive Director of the District and/or the Executive Director of the Agency and the President of the Bank, as applicable, shall meet and attempt to resolve the dispute. In the event the dispute is not resolved the Boards of the District and/or the Agency and applicable Bank representatives shall meet to resolve the dispute. Any amounts due after resolution of a dispute shall be paid within thirty (30) days of such resolution.

(d) The \$250,000 held for reasonable attorneys' fees, costs and expenses of the Agency in Section 8.12(a) shall survive for five (5) years beyond the termination of this Lease, and if funds remain in the Lease Contingency Fund five (5) years after the termination of the Lease, such funds shall be released to the District. Following expiration or termination of this Lease, the District shall have no obligation to the Agency or the Bank, other than as specially provided and budgeted for in Section 8.12(a). The obligations to the Bank under Section 8.12(b) do not survive termination of this Lease.

Section 8.13 Additional Covenants. The District covenants that, during the Lease Term, it will:

(a) neither sell nor otherwise dispose of any property essential to the proper operation of the Financed Project or the maintenance of the Tax Receipts of the District, except as provided for in this Lease or the Note Purchase Agreement. This Section does not prohibit the District from selling or otherwise disposing of any property deemed to be surplus by the District. The District will not enter into any lease or agreement that impairs or impedes the operation of the Financed Project by the District or that impairs or impedes the rights of the Bank with respect to the Tax Receipts of the District;

(b) subject to the provisions of this Lease and the Condominium Documents, continue to operate the Financed Project in good repair and in an efficient and economical manner, making necessary and proper repairs and replacements so that the rights and security of the Bank will be fully protected and preserved;

(c) maintain proper accounts in accordance with generally accepted accounting principles of transactions relating to the Tax Receipts of the District; and

(d) keep or cause to be kept proper books of record and account in which full, true and correct entries will be made of all dealings or transactions of, or in relation to, the business and affairs of the District in accordance with generally accepted accounting principles.

(e) provide annual audited financial statements to the Agency and the Bank within the earlier of 30 days of issuance or 270 days from fiscal year end.

(f) provide annual budget to the Agency and the Bank upon acceptance and approval by the District Board.

(g) Maintain primary operating accounts and supporting bank services with the Bank.

ARTICLE IX ASSIGNMENT, SUBLEASING, PLEDGING AND SELLING

Section 9.1 Assignment and Subleasing. The District may not assign, transfer, encumber or sublease its rights to the Financed Project or this Lease except with the prior written consent of the Agency and the Bank, and subject to each of the following conditions:

(a) No assignment or subleasing shall relieve the District from primary liability for any of its obligations hereunder, and in the event of any such assignment or subleasing, the

District shall continue to remain primarily liable for payment of the Rent as specified in Section 5.3 hereof and for performance and observance of the other covenants and agreements on its part herein provided.

(b) No assignment or subleasing shall impair the exemption of interest on the Note from federal income taxation or the validity of the Note under State law.

(c) The assignee or sublessee shall assume in writing the obligations of the District hereunder to the extent of the interest assigned or subleased.

(d) The District shall, within 30 days after the delivery thereof, furnish or cause to be furnished to the Agency and the Bank a true and complete copy of each such assumption of obligations and assignment or sublease, as the case may be.

Section 9.2 Restrictions on Sale by Agency. The Agency agrees that, except as set forth in Article XI hereof or the Note Purchase Agreement, it will not sell, convey, mortgage, encumber or otherwise dispose of any part of the Financed Project (or its interest therein), so long as there is no event of default that has not been cured or an Event of Nonrenewal has not occurred.

ARTICLE X EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined. The following shall be "events of default" under this Lease and the term "event of default" shall mean, whenever it is used in this Lease, any one or more of the following events:

(a) Failure by the District to make any payment of Rent (following appropriation of such Rent as provided in Section 5.1) when the same shall become due and payable.

(b) Failure by the District to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Lease during the term hereof, other than as referred to in subsection (a) of this Section, for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, given to the District by the Agency or the Bank, provided, however, that in the event that such failure cannot reasonably be remedied within such 30 day period, the District has commenced such remedy during such 30 day period and diligently and continuously prosecutes the same to completion.

(c) The failure by the District promptly to commence proceedings to lift any execution, garnishment or attachment of such consequence as will impair its ability to carry on its operations at the Financed Project or to make any payments under this Lease, or the filing by the District of a petition seeking a composition of indebtedness under any applicable law or statute of the United States of America or of the State.

(d) The District admits insolvency or bankruptcy or its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors or applies for or consents to the appointment of a trustee or receiver for the Financed Project or if bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings for relief under any

bankruptcy law or similar law for the relief of debtors, are instituted by or against the District (other than bankruptcy proceedings instituted by the District against third parties), and if instituted against the District are allowed against the District or are consented to or are not dismissed, stayed or otherwise nullified within ninety days after such institution.

(e) An event of default caused by actions of the District under the Note Purchase Agreement shall have occurred and be continuing.

Section 10.2 Remedies on Default. Whenever any event of default referred to in Section 10.1 hereof shall have occurred and is continuing, and any applicable cure period has expired, the Agency, or the Bank, may take any one or more of the following remedial steps:

(1) The Bank may declare the Rent payable hereunder for the remainder of the Initial Term or the Renewal Term then in effect to be immediately due and payable, whereupon the same shall become due and payable. In no event shall the District be liable in an amount greater than the Rent payable for the remainder of the Initial Term or the Renewal Term then in effect.

(2) The Agency or the Bank may terminate the Lease Term and provide the District notice to vacate the Financed Project, or any portion thereof.

(3) The Agency or the Bank may reenter, repossess, lease part or all of the Financed Project to the extent permitted by law, and apply the proceeds thereof to the District's obligations hereunder.

(4) The Agency or the Bank may take whatever action at law or in equity as may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance or observance of the obligations, agreements, or covenants of the District creating the Event of Default.

In the event that the District fails to make any payment required hereby, the payment so in default shall continue as an obligation of the District until the amount in default shall have been fully paid.

Any moneys received by the Agency or the Bank from the exercise of any of the above remedies, after reimbursement of any reasonable costs incurred by the Agency and the Bank in connection therewith, shall be applied to satisfy the District's obligations hereunder.

Notwithstanding the exercise of any remedy, the Agency the Bank may make any disbursements after the happening of any one or more events of default without thereby waiving their right to accelerate payment of Rent and without liability to make other or further disbursements.

Section 10.3 No Duty to Mitigate Damages. Neither the Bank nor the Agency shall be required to do any act whatsoever or exercise any diligence whatsoever to mitigate the damages to the District if an event of default shall occur hereunder.

Section 10.4 No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency or the Bank is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

Section 10.5 No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Lease should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach waived and shall not be deemed to waive any other breach hereunder.

ARTICLE XI OPTIONS TO PURCHASE

Section 11.1 General Option to Purchase Financed Project. The District is hereby granted the option to purchase the Financed Project and to terminate the Lease Term at any time prior to the expiration of the Lease Term (collectively, the "Option to Purchase"). This Option to Purchase shall survive the termination of the Lease Term, as provided in Section 11.5 below. To exercise such Option to Purchase the District shall give written notice to the Agency, which shall specify the date of closing such purchase, which date shall be not less than forty-five (45) days from the date such notice is mailed. The District shall make arrangements satisfactory to the Bank for giving any required notice of prepayment relating to the Note.

Section 11.2 Purchase Price. The purchase price payable by the District in the event of its exercise of the Option to Purchase granted in Section 11.1 shall be the sum of the following:

(a) An amount of money or Government Obligations which will be sufficient to either (at the District's option): (i) defease or prepay the Note in whole or any instrument issued to refund the Note on the specified prepayment date, including without limitation, principal, all interest to accrue to said prepayment date and prepayment premium and expenses; or (ii) to pay the principal of and interest on the Note or any instrument issued to refund the Note to and including the maturity date or dates thereof; and

(b) An amount equal to the Agency's Fees and Expenses and the Bank Fees and Expenses accrued and to accrue until the final payment of the Note or any instrument issued to refund the Note; and

(c) The sum of \$10 for the Financed Project.

Section 11.3 Option to Purchase Following Full Payment or Defeasance of the Note. Provided that the Note and any instrument issued to refund the Note shall have been paid in full or defeased in full, the District shall have the Option to Purchase the Financed Project. The District shall provide notice to the Agency of the exercise of its Option to Purchase under this Section 11.3 within sixty (60) days of full payment or defeasance of the Note. The closing

of the Option to Purchase shall take place within thirty (30) days following such notice. The purchase price payable by the District shall be the sum of the following:

- (a) An amount equal to any unpaid Agency's Fees and Expenses; and
- (b) The sum of \$10 for the Financed Project.

Section 11.4 Conveyance on Purchase. At the closing of any purchase pursuant to this Article XI, the Agency will, upon receipt of the purchase price, deliver to the District such documents and instruments as are reasonably requested by the District conveying to the District the Financed Project, in "as is" condition, free and clear of all liens, claims and encumbrances other than the Permitted Exceptions. The Agency shall convey the Financed Project to the District by special warranty deed. Additionally, the Agency and District will execute and record a termination of this Lease Agreement in the real property records of Ada County, Idaho.

The District, the Agency, and the Bank shall cooperate in executing such documents as are reasonably necessary to accomplish the purpose of this paragraph.

Section 11.5 Survival of Option to Purchase. The Option to Purchase the Financed Project pursuant to Section 11.1 and Section 11.3 shall survive the termination of the Lease Term and this Lease for a period of ninety (90) days following the time at which the Note or any instrument issued to refund the Note ceases to be outstanding.

Section 11.6 Recording of Option. On or before the Effective Date, but prior to recording this Lease, the parties shall memorialize this Option to Purchase in a separate Option to Purchase Agreement and shall record such separate Option to Purchase Agreement in the real property records of Ada County, Idaho

ARTICLE XII COVENANTS IN EVENT OF NONRENEWAL

Section 12.1 Cooperation Regarding Easements in Event of Nonrenewal. If an Event of Nonrenewal occurs and an Option to Purchase under Article XI has not been exercised, the Agency and the District hereby agree to cooperate in granting easements, licenses or the like to ensure access by both parties and their users from the Boise Centre to all portions of the Project.

ARTICLE XIII MISCELLANEOUS

Section 13.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered mail, postage prepaid, addressed as follows:

If to the District: Greater Boise Auditorium District
P.O. Box 1400
Boise, Idaho 83701
Attention: Pat Rice, Executive Director
Facsimile: 208.336.8803

With a copy to: Kimberly D. Maloney
Givens Pursley LLP
601 W. Bannock
Boise, Idaho 83701
Facsimile: 208.388.1300

With a copy to: Nicholas G. Miller
Hawley Troxell Ennis & Hawley LLP
877 Main Street, Suite 1000
Boise, Idaho 83702
Facsimile: 208.9545241

If to the Agency: Urban Renewal Agency of Boise City, Idaho
aka Capital City Development Corporation
121 N. 9th Street
P.O. Box 987
Boise, Idaho 83702
Attention: John Brunelle, Executive Director
Facsimile: 208.384.4267

With a copy to: Ryan P. Armbruster
Elam & Burke, P.A.
251 E. Front Street, Suite 300
P.O. Box 1539
Boise, Idaho 83701-1539
Facsimile: 208.384.5844

If to the Bank:

The Agency, the District, and the Bank may, by notice hereunder, designate any further or different address to which subsequent notices, certificates, or other communications shall be sent.

Section 13.2 Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the District and the Agency and their respective successors and assigns, subject, however, to the limitations contained herein.

Section 13.3 Severability. In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 13.4 Amendments, Changes. Except as otherwise provided in this Lease or in the Note Purchase Agreement, this Lease may not be effectively amended, changed, modified, altered or terminated without the written consent of the District, the Agency, and the Bank.

Section 13.5 Execution in Counterparts. This Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 13.6 No Offsets. The District shall pay all payments required hereunder, without abatement, deduction, offset or setoff other than those herein expressly provided. The District waives any and all existing and future claims and offsets against any payments required hereunder.

Section 13.7 Recording. The District shall cause this Lease and every assignment and modification hereof or an appropriate and sufficient memorandum thereof to be recorded in the office of the Recorder of Ada County, Idaho.

Section 13.8 Governing Law. This Lease shall be governed and construed in accordance with the law of the State.

Section 13.9 Surrender and Holding Over. At the end of, or the termination of, the Lease Term, unless one of the Options to Purchase is exercised, the District shall surrender and deliver to the Agency the possession of the Financed Project, together with all improvements constructed with Net Note Proceeds, free and clear of all liens and encumbrances other than Permitted Encumbrances, and in good condition subject to reasonable wear and tear.

The District shall be only a tenant at sufferance, whether or not the Agency accepts any Lease Payments from the District while the District is holding over without the Agency's written consent.

Section 13.10 Limitation of Liability of the District. No covenant or agreement contained in this Lease, the Note Purchase Agreement or the Note shall be deemed to be a covenant or agreement of any member, director, officer or employee of the District in an individual capacity. No recourse shall be had for any claim based on this Lease, the Note Purchase Agreement or the Note against any member, director, commissioner, officer or employee, past, present or future, of the District or of any successor body as such, either directly or through the District or any such successor body, under any constitutional provision, statute or rule of law or by the enforcement of any assessment or penalty or otherwise.

Section 13.11 Limitation of Liability of Agency. No covenant or agreement contained in this Lease, the Note Purchase Agreement or the Note shall be deemed to be a covenant or agreement of any member, director, commissioner, officer or employee of the Agency in an individual capacity. No recourse shall be had for any claim based on this Lease, the Note Purchase Agreement or the Note against any member, director, commissioner, officer or employee, past, present or future, of the Agency or of any successor body as such, either directly or through the Agency or any such successor body, under any constitutional provision, statute or rule of law or by the enforcement of any assessment or penalty or otherwise.

IN WITNESS WHEREOF, the Agency and the District have caused this Lease to be executed in their respective corporate names as of the date first above written.

GREATER BOISE AUDITORIUM DISTRICT

By: _____
Chairman

**URBAN RENEWAL AGENCY OF BOISE CITY,
IDAHO AKA CAPITAL CITY DEVELOPMENT
CORPORATION**

By: _____
Chairman

STATE OF IDAHO)
) ss.
County of Ada)

On this _____ day of _____, _____ before me,
_____, a Notary Public in and for said State, personally
appeared _____, known or identified to me to be the Chairman of the
Board of Directors of the Greater Boise Auditorium District, and the person that executed the
within instrument on behalf of the Greater Boise Auditorium District, and acknowledged to me
that the Greater Boise Auditorium District executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the
day and year in this certificate first above written.

Notary Public for Idaho
Residing at _____
My commission expires _____

STATE OF IDAHO)
) ss.
County of Ada)

On this _____ day of _____, _____ before me,
_____, a Notary Public in and for said State, personally
appeared _____, known or identified to me to be the Chairman of the
Board of Commissioners of the Urban Renewal Agency of Boise City, Idaho aka Capital City
Development Corporation, and the person that executed the within instrument on behalf of the
Urban Renewal Agency of Boise City, Idaho aka Capital City Development Corporation, and
acknowledged to me that the Urban Renewal Agency of Boise City, Idaho aka Capital City
Development Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the
day and year in this certificate first above written.

Notary Public for Idaho
Residing at _____
My commission expires _____

APPENDIX A

DEFINITIONS

"Act" means Chapter 49, Title 67, Idaho Code, as amended.

"Advance Rate" means the Bank's prime rate plus 4.00%.

"Agency" means the Urban Renewal Agency of Boise City, Idaho aka Capital City Development Corporation, an independent public body politic and corporate constituting a public instrumentality of the State, organized and operating as an urban renewal agency of the City of Boise City under the Urban Renewal Law or any public corporation succeeding to its rights and obligations as permitted under this Lease.

"Agency Board" means the Board of Commissioners of the Agency.

"Agency Fees and Expenses" means a financing fee, payable upon issuance of the Note, and only if such Note is issued, in the amount of \$40,000, less a credit for the \$5,000 pre-financing fee and for so long as the Note, or any instrument issued to refund the Note, shall be outstanding and the Lease is in effect, an annual fee payable on December 1 of each year in arrears in the amount of \$5,000, and the actual reasonable and necessary out-of-pocket expenses incurred by Agency in connection with the Note and/or the ownership of the Financed Project.

"Acquisition Fund" means the Construction Fund created by the Note Purchase Agreement.

"Assignment of Purchase Agreement" means the Assignment of Purchase Agreement entered into between the District and the Agency whereby the District assigns, and the Agency accepts the assignment of, the District's right to purchase the Financed Project under the Purchase Agreement.

"Authorized Representative" means, in the case of the Agency, the Executive Director and the Chair, in the case of the District, the Executive Director and the Chair, and, when used with reference to the performance of any act, the discharge of any duty or the execution of any certificate or other document, any officer, employee or other person authorized to perform such act, discharge such duty, or execute such certificate or other document.

"Bank" means Wells Fargo Bank, N.A., being the purchaser of the Note.

"Bank Fees and Expenses" means the reasonable and necessary fees and expenses of the Bank in connection with the Note as set forth in the Note Purchase Agreement

"Boise Centre" means the District's existing convention center facilities.

"Centre Building" means that building to be constructed by the Developer on the South Parcel, which contains the Financed Project.

"Clearwater Building" means that building to be constructed by the Developer on the West Parcel, which shall contain, among other things, meeting space and ancillary facilities to be leased or purchased by the District.

"Code" means the Internal Revenue Code of 1986, as amended, regulations thereunder and rulings and judicial decisions interpreting it or construing it.

"Commencement Date" shall have the meaning given to such term in Section 3.2.

"Condominium Documents" means the Condominium Plat and Condominium Declaration for the City Center Plaza, which will govern the Financed Project.

"Consulting Architect" means the architect or engineer as may be designated by the Agency, or the District, acting as agent of the Agency, in writing.

"Consulting Architect Certificate" means an opinion or report signed by the Consulting Architect.

"Continuing Disclosure Undertaking" shall mean a Continuing Disclosure Undertaking with respect to the Note, executed by the District, and dated the date of delivery of the Note.

"Costs of Issuance" means the fees and expenses of issuance, sale and delivery of the Note, including, but not limited to (i) expenses incurred by the Agency and the District in connection with the issuance, sale and delivery of the Note and in connection with the preparation and execution of the Lease, and the Note Purchase Agreement, the fees and expenses of the Bank in connection with the issuance of the Note, bond insurance premiums, if any, title insurance, rating agency, legal, underwriting, consulting and accounting fees and expenses and printing, photocopying and engraving costs; and (ii) any sums required to reimburse the Agency or the District for advances made by either of them for any of the above items.

"Costs of Issuance Fund" means the Cost of Issuance Fund created by the Note Purchase Agreement.

"Debt Service Account" shall have the meaning set forth in the Note Purchase Agreement.

"Debt Service Reserve Account" shall have the meaning set forth in the Note Purchase Agreement.

"Debt Service Reserve Payments" shall have the meaning given to such term in Section 5.3.

"Deed of Trust" means the Deed of Trust and Assignment of Rents from the Agency to the Bank granting a security interest in the Financed Project.

"Developer" shall mean KC Gardner Company, L.C.

"District" means the Greater Boise Auditorium District, Ada County, State of Idaho, a public body organized and operating as an auditorium district pursuant to Chapter 49, Title 67, Idaho Code.

"District Board" means the Board of Directors of the District.

"Effective Date" means the date set forth in the first paragraph of this Lease.

"Environmental Law" means any federal, state or local environmental statute, regulation, or ordinance presently in effect or that may be promulgated in the future as such statutes, regulations and ordinances may be amended from time to time, including but not limited to the statutes listed below:

Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.

Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq.

Clean Air Act, 42 U.S.C. § 7401 et seq.

Federal Water Pollution Control Act (Clean Water Act of 1977), 33 U.S.C. § 1251 et seq.

Federal Insecticide, Fungicide, and Rodenticide Act (Federal Pesticide Act of 1978), 7 U.S.C. § 136 et seq.

Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.

Safe Drinking Water Act, 42 U.S.C. § 300f et seq.

"Event of Default" means any of the events specified in Section 10.1 of the Lease to be an Event of Default.

"Event of Nonrenewal" means the failure of the District to enter into a Renewal Term as provided in Section 5.1(b) of the Lease, provided that failure to enter into a Renewal Term subsequent to the exercise of an Option to Purchase shall not constitute an Event of Nonrenewal.

"Financed Project" shall mean the condominium units comprising the new ballroom facility, related kitchen and ancillary facilities, along with related soft costs and equipment to be constructed in the Centre Building.

"Funds" shall have the meaning set forth in the Note Purchase Agreement.

"Gardner MDA" shall mean the Amended and Restated Master Development Agreement between the Developer and the District, dated as of November 20, 2014, as such agreement is amended from time to time.

"Government Obligations" shall have the meaning set forth in the Note Purchase Agreement.

"Grove Plaza" means the plaza between the Project and the Boise Centre.

"Hazardous Substances" means any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous, toxic or radioactive substance, or other similar term, by Environmental Law.

"Initial Term" means the initial term of this Lease Agreement commencing on the Commencement Date and terminating on the following November 30.

"Insurance Consultant" means an independent person with recognized expertise on insurance matters selected by the District and approved by the Agency and accepted by the Bank.

"Investment Securities" shall mean any legal investments under the laws of the State of Idaho for moneys held hereunder.

"Lease or Lease Agreement" means this Lease Agreement and any amendments and supplements hereto made in conformity with the requirements hereof and of the Note Purchase Agreement.

"Lease Payment Fund" shall have the meaning set forth in the Note Purchase Agreement.

"Lease Payments" means the payments required to be made by the District pursuant to Section 5.3 of this Lease Agreement, and shown on Exhibit A.

"Lease Payment Date" means the annual payment date occurring in the first month of the District's fiscal year and no later than December 31, as agreed to between the Agency, the District and the Bank in accordance with Section 5.3 of this Lease Agreement, and as further described on Exhibit A to the Lease Agreement.

"Lease Term" means the Initial Term and any applicable Renewal Term, subject to the provisions of this Lease Agreement, no one of which shall exceed one District fiscal year in length.

"Net Note Proceeds" means the Net Note Proceeds as defined in the Note Purchase Agreement.

"Net Proceeds" means, when used with respect to any insurance payment or condemnation award, the gross proceeds thereof less the expenses (including attorneys' fees) incurred in collection of such gross proceeds.

"Note" means the Urban Renewal Agency of Boise City, Idaho aka Capital City Development Corporation Lease Revenue Note (Centre Building Project) issued pursuant to the Note Purchase Agreement.

"Note Purchase Agreement" means the Note Purchase Agreement providing for the issuance of the Note to be prepared in accordance with the Bank term sheet dated November 20, 2014.

"Notice of Intent to Renew" means the District's notice of intent to renew the Lease for a Renewal Term, as required by Section 5.1(b) of this Lease Agreement.

"Occupancy Expenses" shall have the meaning given to such term in Section 5.3.

"Option to Purchase" means the Option to Purchase described in Article XI of this Lease Agreement and to be recorded pursuant to a separate option purchase agreement between the District and the Agency pursuant to which the District is granted an option to purchase the Financed Project.

"Payment Date" shall have the meaning set forth in the Note Purchase Agreement.

"Permitted Encumbrances" means, as of any particular time, (i) liens for taxes and special assessments on the Financed Project not then delinquent, (ii) this Lease Agreement and the Note Purchase Agreement, (iii) the Condominium Documents; (iv) purchase money security interests (except with respect to the equipment purchased with proceeds of the sale of the Note), (v) utility, access and other easements and rights of way, mineral rights, restrictions and exceptions that will not materially interfere with or impair the use of the Financed Project, (vi) mechanics' liens, security interests or other encumbrances to the extent permitted in Section 6.1 of this Lease Agreement, (vii) such minor defects, irregularities, encumbrances, easements, rights of way and clouds on title as normally exist with respect to properties similar in character to the Financed Project and as do not in the aggregate materially impair the property affected thereby for the purpose for which it was acquired or is held by the Agency or the District, including the exceptions to title attached as Exhibit B to this Lease Agreement, or binding agreements to remove such easements or encumbrances have been executed, and (viii) other encumbrances approved in writing by the District and the Agency prior to the delivery of the Note.

"Project" means (i) renovation of the District's existing convention center facilities, (ii) construction of a ballroom facility and related kitchen, meeting space, ancillary facilities, and an elevated concourse attaching the District's existing facilities to the ballroom facility, and (iii) purchase of related furniture and equipment. The total estimated cost of the Project is \$38,000,000.

"Purchase Agreement" means the Purchase and Sale Agreement for the Centre Facilities, which is an agreement for the purchase and sale of the Financed Project entered into by and between the District and the Developer; as such agreement has been amended from time to time.

"Rebate Fund" shall mean the Rebate Fund created in the Note Purchase Agreement.

"Rebate Fund Payments" shall have the meaning given to such term in Section 5.3.

"Prepayments" shall have the meaning given to such term in Section 5.3.

"Renewal Term" means any renewal of this Lease Agreement by the District commencing on December 1 following the Initial Term or on any subsequent December 1, and terminating on the following November 30. Each Renewal Term shall be for no more than one year in duration. The final Renewal Term, if renewed by the District, shall commence December 1, 20__ and terminate November 30, 20__, unless this Lease Agreement shall be terminated earlier as provided in the Lease.

"Rent" means Lease Payments, Prepayments, Debt Service Reserve Payments, Rebate Fund Payments and Occupancy Expenses, all as defined in Section 5.3.

"Reserve Requirement" shall mean the lesser of (i) Maximum Annual Debt Service with respect to the Note, calculated as of the date of issuance of the Note, (ii) 125% of average annual Debt Service on the Note, calculated as of the date of issuance of the Note or (iii) 10% of the aggregate principal amount of the Note upon original issuance thereof; provided that the Reserve Requirement shall not exceed the amount permitted to be capitalized from the proceeds of the

Note under then applicable provisions of federal tax law in order to protect the tax-exempt status of interest on the Note.

“Revenue Fund” shall have the meaning set forth in the Note Purchase Agreement.

“South Parcel” means the real property upon which the Centre Building will be constructed.

“State” means the State of Idaho.

“Tax Receipts” means the amounts representing collections by the Idaho State Tax Commission of the hotel/motel room sales tax levied by the District in accordance with Idaho Code Section 67-4917B.

“Urban Renewal Law” means the Urban Renewal Law of 1965, constituting Chapters 20 and 29, Title 50, Idaho Code, inclusive, as amended.

“West Parcel” means the real property upon which the Clearwater Building will be constructed.

EXHIBIT A
LEASE PAYMENTS

EXHIBIT A: LEASE PAYMENTS - 1

05125.0016.6455980.22

000653

EXHIBIT B
PERMITTED ENCUMBRANCES

EXHIBIT B: PERMITTED ENCUMBRANCES - 1

05125.0016.6455980.22

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PETITION EXHIBIT B

LEASE AGREEMENT

EXHIBIT B

05125.0016.7072856.8

000655

**AMENDED AND RESTATED
MASTER DEVELOPMENT AGREEMENT
BETWEEN GREATER BOISE AUDITORIUM DISTRICT
AND KC GARDNER COMPANY, L.C.**

AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT

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AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT (hereinafter, the "**Development Agreement**") is made and entered into effective the 20th day of November, 2014, by and between the **Greater Boise Auditorium District**, a governmental subdivision of the State of Idaho and a body corporate with all the powers of a public or quasi-public corporation (the "**District**") and KC Gardner Company, L.C., a Utah limited liability company ("**Gardner**"). This Development Agreement amends and restates that Development Agreement dated as of July 9, 2014, as amended, by and between the District and Gardner.

1. The Project.

1.1 Definitions. Except where the context indicates otherwise, capitalized terms used herein shall have the respective meanings set forth below:

1.1.1. "Buildings": The Clearwater Building and the Centre Building, located as shown on the Site Plan, and as depicted and described in the Schematic Plans.

1.1.2. "Site Plan": That certain Site Plan drawing attached to this Master Development Agreement as **Exhibit "B"**.

1.1.3. "Schematic Plans": Those certain schematic plans labeled "Updated Colored Floor Plans 6-26-14" prepared by Babcock Design Group, dated 6/25/14, including sheets A1.0.0, A1.1.0, A1.2.0, A1.3.0, A1.4.0 and A1.5.0, together with the "Narrative Program for Meeting Room Facilities and Centre Facilities" attached hereto as Schedule I.

1.1.4. "District Facilities": The "**Centre Facilities**" and the "**Meeting Room Facilities**".

1.1.5. "Centre Facilities": A commercial kitchen, a ballroom (with ballroom typical free span high ceiling configuration featuring moveable walls), and ancillary spaces including ground floor entry, lobby, stairs, elevators, escalators, prefunction areas, storage areas, restrooms, a connecting sky bridge to the fourth floor of the Clearwater Building and a sky bridge at the second floor level at the southwest corner of the Centre Building connecting to an adjacent structure to be acquired by the District. The "**Centre Facilities**" comprise approximately fifty-two thousand (52,000) square feet of floor area in the Centre Building, as depicted on the Schematic Plans.

1.1.6. "Meeting Room Facilities": Meeting rooms on the fourth floor of the Clearwater Building, with some moveable soundproof walls and fourteen (14) foot ceiling heights, together with a working kitchen, restrooms, hallways and other ancillary facilities, comprising approximately twenty-two thousand, Five Hundred Thirty-Seven (22,537) square feet of floor area, as depicted in the Schematic Plans.

1.1.7. **"Tenant Improvements"**: (Defined in Exhibit "TI" attached hereto, with inclusions and exclusions.)

1.2 **The Property.** Gardner is the owner of certain real property located at 101 S. Capitol Boulevard, in the City of Boise, County of Ada, State of Idaho, which property (the **"Property"**) is particularly described in Exhibit "A" attached hereto and incorporated herein by this reference.

1.3 **The Plans.** Gardner intends to develop the Property generally as shown on the site plan attached hereto as Exhibit "B", as the City Center Plaza, to include (inter alia) two (2) Buildings, referred to as the Clearwater Building and the Centre Building (shown on the Site Plan and depicted and described in the Schematic Plans).

1.4 **The District Facilities.** The District desires to have Gardner construct new convention center facilities (the Centre Facilities and the Meeting Facilities, sometimes collectively referred to as the **"District Facilities"**) in the Clearwater Building and the Centre Building, and Gardner desires to construct the same and sell the Centre Facilities to the District, and sell (or lease) the Meeting Room Facilities to the District.

1.5 **The Project.** The development and construction of the Buildings and the District Facilities is the Project. The District and Gardner hereby agree to undertake the Project on the terms and conditions hereinafter set forth.

1.6 **Gardner Affiliates.** Gardner shall have the right to transfer its rights under this Development Agreement, including the right to develop the Project, to an affiliated entity that Gardner has a majority ownership interest in and that Gardner controls (the **"Gardner Affiliate"**). The Gardner Affiliate for the Project will be K.C. Gardner Riverwoods, LLC, an Idaho limited liability company. Wherever the term "Gardner" is used herein, such term shall include the Gardner Affiliate together with any other affiliate, nominee, assignee, or successor in interest as herein provided. Additionally, upon recordation of the condominium documents as set forth in Section 2.1 below, that the Gardner Affiliate will convey the units comprising the District Facilities to City Center Plaza Meeting, LLC, an Idaho limited liability company, that is a special purpose entity that has among its members the Gardner Affiliate and has among its managers Gardner.

1.7 **District Assignment.** The District intends to assign its right to purchase the Centre Facilities (as such purchase right is hereinafter provided) to Capital City Development Corporation (the Urban Renewal Agency of Boise City, Idaho), and Gardner hereby consents to such assignment.

1.8 **The Parties.** The District and Gardner are collectively the **"Parties"** hereunder.

2. Project Documents.

To facilitate the development of the Project as set forth herein, the Parties have agreed to the form of the following documents ("**Project Documents**"), which are to be executed in conjunction with Gardner undertaking the Project.

2.1 Condominium Declaration. The Parties acknowledge that Gardner is constructing the Project as part of a larger mixed use development on the Property as the City Center Plaza. To facilitate the development of the Project, and the conveyance of the Centre Facilities and the Meeting Room Facilities to the District (or District's permitted assignee), Gardner will create one or more condominiums within the Property and the improvements to be constructed thereon. The Parties agree that as to the Meeting Room Facilities and the Centre Facilities, the forms of the declarations and plats creating the condominiums will be subject to mutually agreed upon refinement, adjustment, and modification throughout the development of the Project and City Center Plaza. Gardner shall develop the Project as set forth herein and will create condominium regimes and multiple units within those regimes comprising the Project for purposes of sale or lease to the District as set forth herein. The District's approval of the final form of the condominium documents, in writing, is required. Provided, such approval shall not be unreasonably withheld or delayed.

2.2 Purchase and Sale Agreement. Gardner and the District shall execute and enter into a Purchase and Sale Agreement (the "**PSA**") for the Centre Facilities providing that Gardner shall sell to the District and the District shall purchase from Gardner the Centre Facilities. The PSA shall be substantially in the form attached hereto as **Exhibit "D"**. The PSA shall include the right of the District to assign it and the right to purchase therein provided to the Capital City Development Corporation.

2.3 Lease Agreement; Option to Purchase. Gardner and the District shall execute and enter into a lease, and a parallel option to purchase the Meeting Room Facilities, providing that Gardner shall lease to the District and the District shall Lease from Gardner the Meeting Room Facilities, and further providing the District the option to elect to purchase the Meeting Room Facilities from Gardner in lieu of lease. The lease shall be in the form of **Exhibit "E-1"** attached hereto ("**Lease**"), and the option to purchase shall be in the form of **Exhibit "E-2"** ("**Option**").

2.4 Incorporation. The Parties acknowledge that the Project Documents are an important and integral part of the development, construction and disposition of the Project. This Master Development Agreement is also a Project Document. The Project Documents set forth the Parties' respective duties, rights and obligations with regard to the development, construction and disposition of the Project.

2.5 Interpretation of Project Documents. The Project Documents shall be interpreted consistent with the following provisions:

2.5.1 The intention of the Project Documents is to require complete, correct and timely execution and completion of the Project. Any work required by the Project Documents as necessary to complete the Project and produce the intended result shall be provided by Gardner in keeping with the Project Budget, attached hereto as Exhibit "F". The Project Documents are intended to be an integral whole and shall be interpreted as internally consistent. Work required by any page, part or portion of the Project Documents shall be performed as if it has been set forth on all pages, parts or portions of the Project Documents. The Project Documents may be modified only by an Amendment, as defined in Section 9.7.

2.5.2 Consistent with the Project Documents, development and construction of the Project shall be procured by Gardner through a registered, independent general contractor. The person or entity providing these services shall be referred to as the "General Contractor". These services shall be procured pursuant to a separate agreement between Gardner and the General Contractor. The General Contractor shall be Engineered Structures, Inc. ("ESI").

2.5.3 "Work" as used herein and in the Project Documents means all labor, materials, equipment, supervision, supplies, facilities, tools, transportation, and services, for the whole or a designated part of the Project, to be provided by Gardner (or pursuant to Gardner's direction by the General Contractor, or any subcontractor, sub-subcontractor or other entity for whom Gardner or the General Contractor is responsible) to complete the Project, which is required, necessary, implied or reasonably inferable to construct the whole or a designated portion of the Project and to complete all Work in accordance with the Project Documents. Work also includes, but is not limited to, the fulfillment of all duties and responsibilities of Gardner as provided by the Project Documents.

2.6 **Execution of Project Documents.** The Parties shall cause the PSA, the Lease and the Option to be executed within three (3) business days following approval of the Final Plans and Specifications and the Final Project Budget, as those terms are defined below. Within three (3) business days following recording of the condominium plat and the condominium declaration (so long as such recording is completed following the approval of the Final Plans and Specifications and the Final Project Budget) defining and creating the units comprising the District Facilities the PSA, the Lease and the Option shall be amended to include the platted descriptions of the units comprising the District Facilities.

2.7 **Statute of Frauds Not Applicable.** The District, Gardner and the Gardner Affiliate expressly agree that the Statute of Frauds is not applicable in defeat of this Development Agreement, acknowledging that the District Facilities are adequately identified so as to avoid ambiguity or confusion, while acknowledging the ultimate requirement of condominiumization. The District Facilities are to be constructed and located as shown in the Schematic Plans. The District Facilities include all rights of the owner and occupant of the units comprising same as set forth in the condominium plat and the condominium declaration for the City Center Plaza Condominium to be executed and recorded.

3. Joint Financing Obligations.

The District, Gardner and the Gardner Affiliate acknowledge that due to the complexity of the

development of the Project, their respective obligations hereunder, and the timing for completion of the construction of the Project, that financing of the construction and development of the Project necessitates their cooperative efforts to facilitate satisfactory financing. The Documents related to this Project as set forth in Article 2 will require their joint efforts to satisfy certain obligations related to the lender financing of the development and construction of the Project and the development of City Center Plaza. Due to the complexity of developing City Center Plaza, Gardner Company may utilize one or more banks or other financial entities to finance City Center Plaza's initial development and to provide permanent financing for City Center Plaza, including the Project. All such lenders are potential financing entities are referred to hereafter collectively as the "Lender".

3.1 District's Obligations.

3.1.1 Security Deposit/Calculation of Damage. To facilitate the financing and development of the Centre Facilities, Gardner requires the District to make certain financial commitments at certain milestones in the development of the Project. Upon Gardner's submittal of the application for a building permit for the core and shell elements of the Centre Facilities to the City of Boise and delivery of written notice to the District of the same (but in no event prior to November 1, 2014) the District shall deposit with Gardner the sum of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) ("First Deposit"). This First Deposit is a security deposit to assure the District's performance of its obligation to purchase the Centre Facilities as required herein and in the PSA. Gardner shall provide a letter of credit in favor of the District in form satisfactory to the District, in the amount of the First Deposit as security for Gardner's use of the First Deposit and performance of its obligations hereunder, and to assure repayment of the Centre Deposit as hereinbelow provided (if repayment is required). Such letter of credit shall be provided through the date of closing of the purchase of the Centre Facilities, and Gardner shall renew, extend, or obtain such future letters of credit as may be necessary to satisfy such condition. Even though deposited as a security deposit, Gardner may utilize any portion of the First Deposit in construction at such time as the Final Plans and Specifications (as defined below) have been finally agreed to and approved in writing by the District.

Within three (3) business days following the recording of a condominium plat creating the units defining the Centre Facilities (but in no event prior to July 1, 2015), the parties shall amend the PSA, to include the final legal descriptions of the actual condominium units comprising the Centre Facilities, and the District shall deposit an additional sum of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) ("Second Deposit"). The Second Deposit shall be held in an escrow account, in an impound pursuant to an Impound/Escrow Agreement between the Parties and Fidelity Investment. The First Deposit and the Second Deposit shall be referred to collectively as the "Centre Deposit," and serves solely as security for the District's performance of its purchase obligation for the Centre Facilities upon completion of construction by Gardner.

The Centre Deposit is intended to provide assurance to Gardner and its lenders that if the District failed to proceed to close on the purchase of the Centre Facilities, that Gardner would have funding available to convert the same from their specialized use. As such, the

Centre Deposit shall be utilized and applied as follows: (a) If the District assigns its rights to CCDC to purchase all of the Centre Facilities upon their completion as set forth herein, then upon CCDC's payment of the Purchase Price for the Centre Facilities as set forth in the PSA, Gardner shall refund the First Deposit to the District, and the Second Deposit, together with all other amounts in the escrow impound account with Fidelity Investments shall be released to the District; (b) If the District does not make such assignment of its rights to CCDC and the District purchases the Centre Facilities upon their completion as set forth herein, then the First Deposit shall be credited against the Purchase Price, as such term is defined in the PSA and in conjunction with the Closing of the purchase of the Centre Facilities by the District, the Second Deposit and all other amounts in the escrow impound account with Fidelity Investments shall be released to the District; and (c) If CCDC (as assignee of the District) or the District fails to purchase the Centre Facilities upon completion of the Centre Facilities as set forth herein, then, in addition to any other remedies hereunder and the PSA, Gardner may retain the Centre Deposit.

Gardner shall provide written notice to the District of the issuance of the building permit for the construction of the core and shell of the Centre Facilities. If Gardner fails to commence construction of the Centre Facilities within sixty (60) days after the date of the issuance of a building permit for the construction of the core and shell of the Centre Facilities, or if Gardner breaches its obligations under this Development Agreement beyond all applicable notice and cure periods, then First Deposit and the Second Deposit shall be immediately refunded and paid over to the District.

Gardner and the District agree to the specific performance of this Development Agreement and the PSA. Alternatively, if it is determined that damages are appropriate, then notwithstanding anything in this Development Agreement to the contrary, in no event will the either party be liable to the other under this Development Agreement or under the PSA for any damages in excess of the amount of the Purchase Price. Further, Gardner acknowledges and agrees that all liability of the District under this Development Agreement will expire upon the closing of the purchase of the Centre Facilities by the District or its assignee.

3.1.2 Subordination of Interest in Meeting Room Facilities. The District acknowledges that if it fails to purchase the Meeting Room Facilities at the time that the certificate of occupancy is issued for the Project, and proceeds with the lease of the same instead, then Gardner and the Gardner Affiliate will be required to obtain permanent financing for the Meeting Room Facilities, as the case may be, secured by a deed of trust encumbering the Meeting Room Facilities and that the District will consent to and subordinate its interest in the Meeting Room Facilities to that of the Lender. The District shall provide such consent, acknowledgment and subordination as may be reasonably required to facilitate financing of the Project. This provision is not applicable to the Centre Facilities.

3.2 Gardner Obligations.

3.2.1 Gardner shall obtain the required construction financing for the Project subject to the District's performance. Gardner shall undertake the construction and development and completion in timely fashion of the Project consistent with all covenants for the benefit of the Lender related to the financing of the Project, and consistent with all covenants herein and in the Project Documents with the District.

3.3 Joint Obligations.

3.3.1 The District, Gardner and the Gardner Affiliate acknowledge that they will be required to take future actions to create legal parcels of record by condominiumizing the Project to facilitate the District's purchase of the described Centre Facilities and Meeting Room Facilities.

3.3.2 The District, Gardner and the Gardner Affiliate all further acknowledge and agree that the Lender may impose additional reasonable obligations upon their respective performance under the Project Documents, including, but not limited to, requiring notice of any party's default under any of the Project Documents; granting the Lender a security interest in the Property, the Project, and the Buildings.

3.3.3 The District, Gardner and the Gardner Affiliate all further acknowledge and agree that they shall cooperatively modify the Project Budget and the Construction Schedule as defined in Article 4 below, as may be necessary from time to time to permit the construction of the Project within the District's financing.

4. Design and Development of Project and Construction of Improvements.

4.1 **Project Design.** The Parties have approved the Schematic Plans for the Buildings, and the District Facilities. Upon execution of this Development Agreement by the Parties, Gardner shall authorize the "**Project Architect**" (Babcock Design Group) retained by Gardner to proceed with final design and preparation of detailed plans and specifications (collectively, the "**Final Plans And Specifications**") for the construction of the Buildings and of the District Facilities, subject to the terms, conditions and requirements hereinafter set forth. The Final Plans And Specifications shall be consistent and compatible with the Schematic Plans, with any material deviations requiring the approval of the District, not to be unreasonably withheld.

4.1.1 It is the intention, understanding and agreement of the Parties that the District Facilities shall be constructed, and the work shall include turnkey completed facilities, ready for occupancy and use by the District, with all Tenant Improvements constructed, installed and finished (subject to specific exceptions and/or exclusions as set forth in the "Tenant Improvements" definition, attached hereto as Exhibit "TI", and incorporated herein by this reference).

4.1.2 The District intends to and will retain its own independent consulting architect (the "**District Architect**") to advise the District with regard to the plans and

specifications for the District Facilities. Upon retention by the District of the District Architect, the District shall provide to Gardner the name and all necessary contact information for the District Architect. The Parties recognize and acknowledge that the District Facilities will have and present unique design and specification requirements. Gardner and the Project Architect shall work cooperatively with the District Architect, consulting with the District Architect and providing plans and specifications as prepared, in a timely fashion to the District Architect so that the District Architect can have full opportunity to advise the District, Gardner and the Project Architect of any and all recommendations with regard to the design, the plans and the specifications for the Buildings and the District Facilities. Ultimately, the District shall have the right, prior to commencement of construction of the Buildings and the District Facilities, to approve the Final Plans And Specifications, such approval not to be unreasonably withheld or delayed.

4.2 Budget and Schedule.

4.2.1 Gardner has selected Engineered Structures Incorporated ("ESI") as its General Contractor for the Project. Based upon the Schematic Plans, Gardner and ESI have completed a preliminary estimation of the cost of the Project, and have developed a preliminary budget for the Project ("**Project Budget**") which shall be subject to modification upon prior written approval of Gardner and the District as set forth below; and a construction schedule for the Project ("**Construction Schedule**"). The Project Budget is attached hereto as **Exhibit "F"** and the Construction Schedule is attached hereto as **Exhibit "G"**.

4.2.2 The Parties agree that the Purchase Price for each of the respective Centre Facilities and the Meeting Room Facilities shall be determined and established by the final Project Budget as agreed upon by the Parties. As the plans and specifications are developed, refined and finalized (and ultimately approved by the District), Gardner and ESI shall refine the Work costs, and provide such detail and back up for such costs as may reasonably be required by the District and the District Architect. The Parties and ESI shall work jointly in good faith to modify the Project Budget and Construction Schedule as necessary and neither party shall unreasonably withhold or condition consent to modifications to the Project Budget or Construction Schedule, where such modifications are reasonably required to satisfy the District's requirements for the Project.

4.2.3 The Parties acknowledge that the Project Budget, the Construction Schedule, and any design or construction contracts Gardner enters into with the General Contractor or the design professional, related to the Project shall be modified, including increases, prior to determination of the Final Project Budget pursuant to section 4.2.4, if

(a) The District directs a change in the Project that increases the cost of design or construction for the Project;

(b) Gardner encounters subsurface or concealed conditions on the Property, including hazardous materials, that increases the cost of any design services or construction;

(c) Gardner incurs unavoidable increased costs related to the design or construction of the Project as a direct result of changes, in applicable laws, codes and ordinances, such as changes in life-safety building codes; zoning laws; taxes and fees applicable to the Project; or environmental regulations; and

(d) Emergencies occur that increase the cost of design or construction for the Project.

4.2.4 Upon completion of the Final Plans and Specifications, the Project Budget shall be updated as the **"Final Project Budget"** and shall be presented by Gardner for approval by the District, such approval not to be unreasonably withheld or delayed. The Final Project Budget shall be in the same format as the Budget attached hereto as **Exhibit "F"**, with such additional detail as the District may reasonably request. The Budget shall show a final cost of the work for the Centre Facilities and separately for the Meeting Room Facilities. It is the intention and agreement of the Parties that the Final Project Budget shall be on a cost plus fee basis, with a Developer's Fee of five percent (5%) on total actual costs. The Final Project Budget total sum shall be a guaranteed maximum price (**"GMP"**). The books and records (including all supplier and subcontractor supply agreements and contracts, and all work orders, change orders and invoices) shall be made available to the District and its agents for review, upon reasonable notice. Gardner and ESI shall continually seek to value engineer the Project and reduce the costs of the Work (without adversely impacting the quality or design in the Project). To the extent reductions in the costs of the Work are realized after the GMP has been established, Gardner shall be entitled to a savings bonus equal to fifty percent (50%) of the amount by which the final cost of the Work is less than the GMP.

4.2.5 Gardner acknowledges and agrees that the anticipated date of substantial completion shall be August 31, 2016 (**"Targeted Date of Substantial Completion"**). **"Substantial Completion"** shall mean the stage in the progress of the Project, or any designated portion of the Project when the Project is sufficiently complete in accordance with the Project Documents so that the District can occupy or utilize the Project, or a designated portion thereof, for its intended use.

4.2.6 By executing this Development Agreement Gardner confirms that the Targeted Date of Substantial Completion is a reasonable period for performing all Work associated with the Project assuming that the District does not require material changes to the scope of the Project that would modify the Work as set forth herein.

4.2.7 The Project shall not be considered fully complete until the occurrence of the following:

(a) A final certificate of occupancy has been issued by the authority having jurisdiction, and

(b) The District agrees in writing that any and all remaining punchlist items have been completed to the District's satisfaction. Gardner shall have 90 days from

Targeted Date of Substantial Completion, to comply with both of these items. If final completion is not achieved within 90 days of the Targeted Date of Substantial Completion, the District may, at its own discretion, perform whatever tasks necessary to complete the above Work, and Gardner shall pay the District for those costs.

(c) Prior to the District exercising its rights under 4.2.7 (b), it shall provide a minimum of ten (10) days written notice to Lender.

4.3 Design and Construction.

4.3.1 Agreements. Gardner shall enter into a design contract with Project Architect to undertake the design of the Project consistent with the Project Budget and Construction Schedule, attached hereto and incorporated herein. The design contract shall be substantially in the form attached hereto as **Exhibit "H" ("Design Contract")**. Gardner warrants that Project Architect is appropriately licensed in the state of Idaho. Gardner shall enter into a construction contract with ESI to undertake the development of the Project consistent with the Project Budget and Construction Schedule. The construction contract with the General Contractor shall be substantially in the form attached hereto as **Exhibit "I" ("Construction Contract")**. Gardner warrants that the General Contractor and any subcontractors shall be appropriately registered to perform the Work outlined herein and shall indemnify and hold harmless the District, its directors, officers, employees and agents from performance of Work by a person, company, corporation or entity not so registered. The Parties acknowledge that the Design Contract and Construction Contract are incorporated by reference and that upon execution they shall be deemed to be included in the Project Documents.

4.3.2 Responsibility for Subcontractors. Gardner shall ensure that the Construction Contract with the General Contractor shall ensure that the General Contractor shall be responsible to the District for acts and omissions of the subcontractors, sub-subcontractors, materialmen, suppliers, and their agents and employees, and any other persons or entities performing portions of the Work for or on behalf of the Gardner or any of its subcontractors or sub-subcontractors, or claiming by, through or under Gardner, and for any damages, losses, costs and expenses resulting from such acts or omissions.

4.3.3 Responsibility To Pay For Elements Of The Work And Overtime. Unless otherwise provided in the Project Documents, the General Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Project. Should the Project Documents require Work to be performed after regular working hours or should the General Contractor elect to perform Work after regular hours, the additional cost of such Work shall be borne by the General Contractor.

4.3.4 Responsibility For Labor Issues. Whenever any provisions of the Project Documents conflict with any agreements or regulations of any kind in force among members of any trade association, union or council, which regulate what Work shall be included in the work of particular trades, Gardner shall make all necessary arrangements with the General

contractor to reconcile any such conflict without delay or cost to the District and without recourse to the District.

4.3.5 Disciplined And Skilled Employees. Gardner shall require the General Contractor to enforce strict discipline and good order among its employees, subcontractors and other persons carrying out the Work for or on behalf of the General Contractor and shall ensure its subcontractors do not permit employment of unfit persons or persons not skilled in the tasks assigned to them.

4.3.6 Permits And Fees. Consistent with the Project Budget and the Project Documents, all permits and governmental fees, licenses, inspections and all other consents for construction necessary for proper execution and completion of the Project which are customarily secured after execution of the Project Documents and which are legally required, shall be secured and paid for by Gardner. Gardner shall deliver all original permits, licenses and certificates to the District upon completion of the Project.

4.3.7 Legal Notices. Gardner shall require the General Contractor to perform the Work in compliance with and give notices required by, laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.

4.3.8 Superintendent. Gardner shall require the General Contractor to employ a competent superintendent and necessary assistants who shall be in attendance at the Project during performance of the Work. The superintendent shall represent General Contractor and information and communications given to the superintendent shall be as binding as if given to the General Contractor.

4.3.9 Construction Schedule. All Work shall be performed consistent with the Construction Schedule, a true and complete copy being attached hereto as **Exhibit "G."** The Construction Schedule shall not exceed time limits provided in the Project Documents, shall be revised as required herein and at appropriate intervals as required by the conditions of the Work and the Project, shall be related to the entire Project, and shall provide for expeditious and practicable execution of the Work. The Construction Schedule shall not be revised without prior review and approval of the District, except as provided herein. The Construction Schedule shall be reviewed every thirty (30) days and updated versions shall be submitted to the District. If any updated version of the Construction Schedule indicates that the Date of Substantial Completion for the Work will be beyond the Date of Substantial Completion established herein, then the Gardner and the General Contractor shall submit to the District for its review and approval a narrative description of the means and methods which the General Contractor intends to employ to expedite the progress of the Work to ensure timely completion of the Work by the Date of Substantial Completion. To ensure such timely completion, the General Contractor shall take all necessary action including, without limitation, increasing the number of personnel and labor on the Project and implementing overtime and double shifts.

4.3.10 Project Records. Gardner shall maintain for the District at the Project, or at such other location as reasonably acceptable to the District, one record copy of any drawings, specifications, addenda, change orders and other contract or subcontract amendments, in good order and marked currently to record changes and selections made during construction, and one record copy of all approved shop drawings, product data, samples and similar required submittals. These shall be available to the District and shall be delivered to the District upon final completion of the Work.

4.3.11 Finished Product. Gardner shall require the General Contractor to ensure that all cutting or patching required for performance and completion of the Work in accordance with the Project Documents. All areas requiring cutting and patching shall be restored to a completely finished condition acceptable to the District.

4.3.12 Site Maintenance. Gardner shall require the General Contractor to use its best efforts to prevent and to control dust and shall be responsible for overall cleanliness and neatness of the Work. At completion of the Project, Gardner shall require the General Contractor to remove from and about the Project waste materials, rubbish, the General Contractor's tools, construction equipment, machinery and surplus materials. If the General Contractor fails to clean up the Project as provided herein, the District may do so and the cost thereof shall be charged to Gardner.

4.3.13 Access To The Work. Upon reasonable prior notice, Gardner and the General Contractor shall allow the District access to the Project and surrounding area during all portions and stages of the Work.

4.3.14 Indemnification. To the fullest extent permitted by law, Gardner, either through itself or others, shall indemnify and hold harmless the District, the District's officers, directors, members, consultants, agents and employees (the Indemnitees) from all claims for bodily injury and property damage other than to the Work itself and other property required to be insured, including reasonable attorneys' fees, costs and expenses, that may arise from the performance of the Work, but only to the extent caused by the negligent acts or omissions of Gardner, Subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Gardner shall not be required to indemnify or hold harmless the Indemnitees for any negligent acts or omissions of the Indemnitees.

4.3.15 Tests And Inspections. If the Project Documents or any laws, statutes, ordinances, building codes, rules, regulations or orders of any governmental body or public or quasi-public authority having jurisdiction over the Work or the Project require any portion of the Work to be inspected, tested or approved, Gardner shall give the District timely notice thereof so the District, and if requested by the District, it may observe such inspection, testing or approval.

4.3.15.1 If the design professional or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not

included herein, Gardner shall give timely written notice to the District of when and where tests and inspections are to be made so that the District may be present for such procedures.

4.3.15.2 Gardner shall obtain and promptly deliver to the District all required certificates of testing, inspection or approval, unless otherwise required by the Project Documents.

4.3.15.3 Tests or inspections of the Work or Project shall be scheduled and conducted so as to avoid unreasonable delay in the Work.

4.3.16 Policies Of Employment. Gardner, and Gardner shall require the General Contractor its subcontractors and sub-subcontractors shall comply with all federal, state and local laws and regulations regarding employment, discrimination and affirmative action.

4.3.17 Safety Of Persons And Property. Gardner shall require the General Contractor to be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work in accordance with the Project Documents. Gardner shall require the General Contractor to take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

4.3.17.1 General Contractor's employees and the employees of subcontractors and sub-subcontractors and invitees on the Project or otherwise engaged in performing the Work and other persons who may be affected thereby;

4.3.17.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off Property, under care, custody or control of Gardner, the General Contractor, or any subcontractors; and,

4.3.17.3 other property adjacent to the Property and designated area for the Work, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement as part of the Work.

4.3.18 Gardner shall require the General Contractor to give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. Gardner shall provide all facilities and shall follow all procedures required by the Occupational Safety and Health Act (OSHA) including, but not limited to, providing and posting all required placards and notices, and shall otherwise be responsible for complying with all other mandatory safety laws.

4.3.19 Gardner shall require the General Contractor to erect and maintain, and, as appropriate, require its subcontractors to also erect and maintain, as required by existing

conditions and performance hereunder, reasonable safeguards for safety and protection, including posting gender neutral danger signs and other warnings against hazards, promulgating safety regulations and notifying users of adjacent sites and utilities.

4.3.20 When use or storage of explosives or other hazardous materials or equipment or unusual methods, if any, are necessary for execution of the Work, Gardner shall give the District reasonable advance notice and shall exercise reasonable care and execute such activities under supervision of properly qualified personnel.

4.3.21 Gardner shall require the General Contractor to promptly remedy, or cause to be remedied, damage and loss to property referred to herein.

4.3.22 Gardner shall require the General Contractor to designate a responsible member of General Contractor's organization whose duty shall be the prevention of accidents. This person shall be the General Contractor's superintendent unless otherwise designated by the General Contractor.

4.3.23 Gardner shall require the General Contractor to promptly report in writing to the District all accidents arising out of or in connection with the Work which causes death or significant personal injury, giving full details and statements of any witnesses.

4.3.24 When required by law or for the safety of the Work, Gardner shall require the General Contractor to shore up, brace, underpin and protect foundations and other portions of existing structure(s) which are in any way affected, or potentially affected, by the Work.

4.3.25 If any hazardous material, including asbestos or polychlorinated biphenyl (PCB), is encountered on the Property or adjoining property, Gardner shall require the General Contractor, upon recognizing the condition, to immediately stop Work in the affected area and report the condition to the District in writing. The Construction Schedule and the Date of Substantial Completion shall be extended for such periods of time as the Work is stopped. The District shall obtain the services of a licensed laboratory to verify the presence or absence of any hazardous material and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume.

4.4 Emergencies. Gardner shall require the General Contractor in an emergency affecting safety of persons or property, to act, at General Contractor's discretion, to prevent threatened damage, injury or loss.

4.5 Uncovering Work. If a portion of the Work is covered contrary to the District request or contrary to the requirements of the Project Documents, and the District makes a written request setting forth the need or justification for the uncovering or examination of such covered portion, then to such extent as is commercially reasonable and necessary, such portion thereof shall be uncovered for examination and shall be replaced at the Gardner's expense without adjustment to the Date of Substantial Completion or Project Budget. If a portion of the

Work has been covered which the District has not specifically requested to examine prior to its being covered, the District may request to see such Work and it shall be uncovered by Gardner. If such Work or Owner Furnished Item is in accordance with the Project Documents, costs of uncovering and replacement shall, by appropriate change order, be at the District's expense. If such Work is not in accordance with the Project Documents, costs of uncovering and correction shall be at Gardner's expense unless the condition was caused by the District.

4.6 Correcting Work. Gardner shall require the General Contractor to promptly correct Work rejected by the District that is not reasonably consistent with the requirements of the Project Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the design professional's services and expenses made necessary thereby, shall be at the expense of the party undertaking the correction.

4.7 Acceptance Of Nonconforming Work. The District may, at its sole option, elect to accept Work that is not reasonably consistent with the requirements of the Project Documents, in which case the Project Budget shall be adjusted as is appropriate and equitable.

4.8 Correction Of Work After Substantial Completion. If, within one (1) year after the Date of Substantial Completion of the Work (unless otherwise provided in any Certificate of Substantial Completion approved by the parties, or within such longer period of time as may be provided by law or in equity, or by terms of an applicable special warranty required by the Project Documents), any of the Work is found to be inconsistent with the requirements of the Project Documents, Gardner shall require the General Contractor to correct it promptly at the Gardner's sole expense after receipt of written notice from the District. The District shall give such notice promptly after discovery of the condition by the District. This obligation shall survive acceptance of the Work under the Project Documents and termination of Project Documents. The one-year period for correction of Work shall be extended with respect to portions of such Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. If nonconforming Work is not corrected within a reasonable time during that period after receipt of notice from the District, the District may correct it. Establishment of the one-year period for correction of Work as described in this Paragraph relates only to the specific obligation to correct the Work, and has no relationship to the time within which the general obligation to comply with the Project Documents may be enforced, or to warranties, if any provided in the Project Documents or the time within which proceedings may be commenced to establish liability with respect to the performance of obligations under the Project Documents. The obligations and liability, if any, with respect to any of the Work found to be inconsistent with the requirements of the Project Documents discovered after the one-year correction period shall be determined in accordance with Idaho law.

5. Coordination of Building and Site Work Construction. The Parties shall cooperate with each other, as well as the contractor, design professionals and their respective agents to facilitate the construction and development of the Project to minimize interference with adjoining

properties while ensuring that the work associated with the Project proceeds as set forth in Article 4 above.

6. Force Majeure. No Party, shall be considered in breach or default of its obligations with respect to the preparation of the Project for redevelopment or the commencement and completion of construction of the improvements, in the event of forced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; natural disasters; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; lack of materials or labor at commercially reasonable prices or in commercially reasonable quantities; adverse economic conditions; governmental restrictions or priority; unusually severe weather; acts of another party not within its control; environmental analysis, or removal of hazardous or toxic substances; acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of either party shall not excuse performance by that party); or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform. The time for the performance of the obligations shall be extended for the period of delay, as mutually determined by the parties, if the party seeking the extension shall request it in writing of the other party within thirty (30) days after the beginning of the forced delay. Times of performance under this Agreement may also be extended in writing by the Parties.

7. Notices. Any notice, demand, request, invoice, bill or other instrument which may be or is required to be given under this Development Agreement or the Project Documents shall be delivered in person, via nationally recognized overnight courier, or sent by United States certified or registered mail, postage prepaid, to as set forth herein as applicable. Notices shall be in writing unless oral notice is expressly permitted by this Lease and shall be deemed given on the date immediately following deposit with the overnight courier or upon actual receipt, if earlier. A party may change its notice address as set forth herein by delivering notice thereof to the other party. Notices shall be delivered as follows:

Gardner:

K.C. Gardner Company, L.C.
101 S. Capitol Blvd. Suite 1200
Boise, Idaho 83702
Attention: Thomas Ahlquist

The District:

Greater Boise Auditorium District
850 W. Front Street
Boise, ID 83702
Attention: Pat Rice

With copy to:

Don Knickrehm
Givens Pursley LLP
601 W. Bannock Street
Boise, ID 38701

8. Default. No party shall be deemed to be in default under this Development Agreement except upon the expiration of thirty (30) days from receipt of written notice from the other party specifying the particulars in which such party has failed to perform its obligations under this Development Agreement, unless such party, prior to expiration of said thirty (30) day period, has rectified the particulars specified in said notice of default. Upon the occurrence of any default, the non-defaulting party shall have all rights and remedies available to it at law or in equity. In addition to the remedies set forth in this Development Agreement, each party shall have all other remedies provided by law or equity to the same extent as if fully set forth herein word for word. No remedy available to any party shall exclude any other remedy available to such party under the Development Agreement or under law or equity. All remedies shall be cumulative.

9. General Provisions.

9.1 Reliance by Parties. It is of the essence of this Development Agreement that the construction of the improvements contemplated herein and the performance of each Party's responsibilities is of substantial economic significance to the other Party and that the failure of either party to perform at the time and in the manner contemplated herein shall result in substantial direct and consequential damages to the other Party.

9.2 Waiver of Jury Trial. **TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE CLOSING OR ANY TERMINATION OF THIS AGREEMENT.**

9.3 Applicable Law. The laws of the State of Idaho shall govern the interpretation and enforcement of this Agreement.

9.4 Not a Partnership. The provisions of this Development Agreement are not intended to create, nor shall they in any way be interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

9.5 No Third Party Beneficiary Rights. Except as specifically provided herein, nothing contained in the Project Documents shall create, or be interpreted to create, privity or any other contractual relationship between any persons or entities other than the District and Gardner. Except as provided herein and in the Agreement, there are no third-party beneficiaries to the Project Documents. Nothing contained in the Project Documents shall create or give to third parties any claim or right of action against the District or Gardner, except as specifically provided in the Project Documents.

9.6 Successors and Assigns. The terms, covenants, conditions and agreements contained herein shall constitute covenants running with the land and shall be binding upon, and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties hereto. In the event of any sale or conveyance of a party's interest in its Parcel, said party shall remain liable to the other party for the performance of said party's obligations hereunder.

9.7 Modification. Neither this Development Agreement nor the Project Documents shall be modified without the written agreement of all of the parties hereto.

9.8 Captions and Headings. The captions and headings in this Development Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

9.9 Entire Agreement. This Development Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Development Agreement shall be construed as a whole and not strictly for or against any party.

9.10 Time for Performance. Time is of the essence of this Development Agreement.

9.11 Time Period Computation. All time periods in this Development Agreement shall be deemed to refer to calendar days unless the time period specifically references business days.

9.12 Construction. In construing the provisions of this Development Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

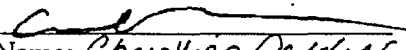
9.13 Joint and Several Obligations. In the event any party hereto is composed of more than one (1) person, the obligations of said party shall be joint and several.

9.14 No Waiver. A Party's failure to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that said party may have and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms, covenants, conditions or agreements contained herein by the same or any other party hereto.

IN WITNESS WHEREOF, the Parties have executed this Development Agreement as of the date first set forth above.

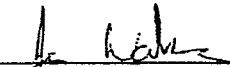
GARDNER:

KC Gardner Company, L.C., a Utah limited liability company *gw*

By: 
Name: *Christian Gardner*
Title: Manager

THE DISTRICT:


Greater Boise Auditorium District, a governmental subdivision of the State of Idaho

By: 
Name: Jim Walker
Title: Chairman

**CONSENTED TO BY
GARDNER AFFILIATE:**

KC Gardner Riverwoods, L.C., a Utah limited liability company *Card*

By: *KC*
Gardner Company, L.C., a Utah limited liability company

By: 
Name: *Christian Gardner*
Title: Manager

List of Exhibits and Schedules:

- Exhibit "A" – Legal Description of Property
- Exhibit "B" – Site Plan
- Exhibit "C" – Reserved
- Exhibit "D" –Purchase And Sale Agreement
- Exhibit "E-1" – Lease of Meeting Space
- Exhibit "E-2" – Option to Purchase Meeting Space
- Exhibit "F" – Project Budget
- Exhibit "G" – Construction Schedule
- Exhibit "H" – Design Contract
- Exhibit "I" – Construction Contract
- Exhibit "TI" – Tenant Improvements (with inclusions and exclusions)
- Schedule 1 – Narrative Program for Boise Center Facilities Improvements and Schematic Plans

ASSIGNMENT AND ASSUMPTION AGREEMENT
(Purchase and Sale Agreement for Centre Facilities)

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Assignment") is entered into as of the ____ day of _____, 2014, between the Greater Boise Auditorium District, Ada County, State of Idaho, an auditorium district organized and operating under the laws of the State of Idaho (the "District"), created and maintained under the provisions of Title 67, Chapter 49, Idaho Code, as amended, and the Urban Renewal Agency of Boise City, Idaho, aka Capital City Development Corporation (the "Agency"), a public body, corporate and politic, organized and operating pursuant to Title 50, Chapters 20 and 29, Idaho Code.

Recitals

WHEREAS, the District and the Agency have entered into that Amended and Restated Development Agreement (the "Development Agreement") dated as of the ____ day of _____, 2014;

WHEREAS, pursuant to the Development Agreement, the Agency agreed to work with the District in the expansion of its existing convention center facilities in Boise, Idaho (the "Project") by providing non-appropriation lease financing for a portion thereof;

WHEREAS, the District has entered into a Purchase and Sale Agreement for Centre Facilities (the "Purchase Agreement"), dated the ____ day of _____, 2015, attached hereto as Exhibit A, with City Center Plaza Meeting, LLC, a Utah limited liability company, (the "Seller") for the purchase of a portion of the Project known as the "Centre Facilities", which Centre Facilities are more particularly defined in the Purchase Agreement and legally described on Exhibit B hereto;

WHEREAS, in furtherance of the Development Agreement, the District desires to assign the Purchase Agreement to the Agency and the Agency desires to accept assignment of the Purchase Agreement, assume the District's obligations under the Purchase Agreement and consummate the purchase of the Centre Facilities pursuant to the terms thereof; and

WHEREAS, in Section 4A of the Purchase Agreement, Seller approved the District's assignment of the Purchase Agreement to the Agency.

Agreement

NOW, THEREFORE, in consideration of the recitals set forth above, which the parties acknowledge are true and correct, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment: The District hereby assigns and transfers to the Agency all of the District's right, title and interest in, to, and under the Purchase Agreement.
2. Assumption: The Agency hereby accepts assignment of the Purchase Agreement, assumes the District's obligations thereunder, and agrees to perform, pay, and discharge all of

the obligations of the District thereunder and to purchase the Centre Building pursuant to the terms and conditions thereof.

3. Further Assurances: Each party to this Assignment hereby covenants and agrees to perform all such further acts and deliver all such further agreements, instruments and other documents as the other party shall reasonably request to consummate this Assignment and to close the purchase of the Centre Building pursuant to the terms of the Purchase Agreement.

IN WITNESS WHEREOF, the Assignor and the Assignee have caused this Assignment to be duly executed on the date first written above.

URBAN RENEWAL AGENCY OF BOISE CITY,
IDAHO, AKA CAPITAL CITY DEVELOPMENT
CORPORATION

By: _____
Chairman

GREATER BOISE AUDITORIUM DISTRICT

By: _____
Chairman

By: _____
Executive Director

EXHIBIT A

**Purchase and Sale Agreement for Centre Facilities
(attached)**

ASSIGNMENT AND ASSUMPTION AGREEMENT - 3

CCDC - GBAD Assignment and Assumption Agreement (GP_KDM 10-2-14).DOC[11449-13]

PURCHASE AND SALE AGREEMENT FOR CENTRE FACILITIES

THIS PURCHASE AND SALE AGREEMENT FOR CENTRE FACILITIES (this "Contract"), is executed as of _____, 2015 (the "Effective Date") by and between City Center Plaza Meeting, LLC, an Idaho limited liability company ("Seller"), and Greater Boise Auditorium District, a governmental subdivision of the State of Idaho and a body corporate with all the powers of a public or quasi-municipal corporation ("Buyer").

In and for the consideration of the payment of purchase price as hereinafter set forth, Buyer and Seller hereby agree as follows:

1. Purchase.

Seller (or Seller's affiliate) is developing certain improvements, including but not limited to a building containing ballroom space, commercial kitchen and ancillary spaces, which spaces are condominium units, common areas and limited common areas within the building known as the "Centre Building", as further defined in Exhibit D (the "Centre Facilities"). Seller hereby agrees to sell, and Buyer agrees to purchase, the Centre Facilities subject to the terms and conditions hereof. All capitalized terms used and not defined herein shall have the meanings set forth on Exhibit "D", attached hereto, incorporated herein by this reference.

2. Purchase Price.

The purchase price for the Centre Facilities is [\$ _____] ("Purchase Price"), payable by wire transfer of immediately available federal funds on or before the Closing Date (as defined in Section 6 hereof).

3. Legal Description of Centre Facilities.

The Centre Facilities are legally described in Exhibit "A" attached hereto, incorporated herein by this reference.

4. Buyer's Conditions.

Notwithstanding the execution of this Contract, Buyer shall not be obligated to proceed to Closing until each of the following conditions are satisfied:

(a) Construction. Seller shall have completed construction of the Centre Building and the Centre Facilities in accordance with the final plans and specifications approved by both the Buyer and the Seller in writing on _____, 2015 (the "Final Plans and Specifications").

(b) Condition of Title. Title to the Centre Facilities shall be conveyed by a Special Warranty Deed, in the form attached hereto and incorporated herein as Exhibit "B"; free and clear of all liens, encumbrances, easements, assessments, restrictions, or other exceptions to title caused or suffered by Seller or anyone claiming by or through Seller (the "Encumbrances") except for (i) the exceptions set forth in Exhibit "C" attached hereto; or (ii) any Encumbrance

created pursuant to the requirements of the Development Agreement ("Permitted Exceptions"). Upon execution of this Contract, Buyer shall obtain or cause Escrow Holder to obtain a commitment for title insurance ("Title Commitment") with instructions that the original Title Commitment and exception documents be delivered to Buyer with copy to Seller. Buyer shall have ten (10) days after receipt of the Title Commitment, to review the condition of title set forth in the Title Commitment and to deliver notice to Seller in writing of any objections Buyer may have, with reasons specified, of anything contained in the Title Commitment that is not a Permitted Exception as set forth above. In the event of an objection by Buyer, Closing shall be continued until such date as Buyer and Seller can resolve and eliminate any item that is not a Permitted Exception as set forth above. Seller shall cause (at Seller's sole cost and expense) any exception objected to by Buyer, which is not a Permitted Exception and that is either a monetary lien or that would constitute a material impairment to Buyer's title or use and enjoyment of the Centre Facilities, to be timely eliminated and removed.

(c) **Title Insurance.** Escrow Holder shall be prepared to obtain, issue and deliver to Buyer, upon closing, a standard owner's policy of title insurance, in the full amount of the Purchase Price, insuring fee simple title to the Centre Facilities to be vested in Buyer, subject only to the Permitted Exceptions.

4A. **Buyer's Right of Assignment.** Buyer intends to assign this Contract and its rights hereunder to Capital City Development Corporation (the Urban Renewal Agency of the City of Boise, Idaho) prior to Closing; and, upon such assignment, Capital City Development Corporation will close the purchase of the Centre Facilities herein contemplated. Buyer is hereby granted such right of assignment, and Seller covenants and agrees to accept and recognize such assignment and to sell the Centre Facilities to Capital City Development Corporation.

5. [Intentionally Omitted].

6. Closing.

Buyer shall open escrow with First American Title Insurance Company, 800 W. Main Street, Suite 910, Boise, Idaho 83702, Attn: Kimberly Yelm ("Escrow Holder"). Closing shall occur thirty (30) days from the date Seller delivers a Certificate of Occupancy to Buyer issued by the City of Boise, Idaho ("Closing Date") upon the delivery of the Purchase Price to Seller and the delivery of the required documents to Buyer. On or before the Closing Date, Seller shall deposit with Escrow Holder a duly executed and acknowledged Special Warranty Deed conveying the Centre Facilities to Buyer with instructions to deliver the Special Warranty Deed to Buyer when Escrow Holder is in a position to disburse to Seller the entire Purchase Price. On or before the Closing Date, Buyer shall deposit with Escrow Holder the Purchase Price with instructions to disburse the entire Purchase Price to Seller upon delivery of the Special Warranty Deed. If the Closing Date, determined in accordance with the foregoing, is a Saturday, Sunday or legal holiday, then the Closing Date shall be the next succeeding day that is not a Saturday, Sunday or legal holiday.

7. Costs and Expenses.

Upon Closing, Buyer shall pay the Escrow (Closing) Fee and any other costs or charges assessed by Escrow Holder related to the Closing, and shall pay the title insurance premium for the Owner's Policy. Seller shall pay any and all costs for the release of any monetary lien

occupancy of Buyer and that Seller would incur significant extraordinary expense to make the Centre Facilities useable for another purpose; and therefore, the Buyer and Seller agree that the remedies of specific performance or monetary damages as set forth above, are appropriate and reasonable.

10. Notices.

Any notice, demand, request, invoice, bill or other instrument which may be or is required to be given under this Contract shall be delivered in person, via nationally recognized overnight courier, or sent by United States certified or registered mail, postage prepaid, to as set forth herein as applicable. Notices shall be in writing unless oral notice is expressly permitted by this Lease and shall be deemed given on the date immediately following deposit with the overnight courier or upon actual receipt, if earlier. A party may change its notice address as set forth herein by delivering notice thereof to the other party. Notices shall be delivered as follows:

SELLER:

City Center Plaza Meeting, LLC
Attention: Christian Gardner
90 South 400 West, Suite 360
Salt Lake City, UT 84101

BUYER:

Greater Boise Auditorium District
PO Box 1400
Boise, ID 83701

with a copy to:

KC Gardner Company, L.C.
Attention: General Counsel
101 S. Capitol Boulevard, Suite 1200
Boise, ID 83702

Donald E. Knickrehm
Givens Pursley
601 W. Bannock Street
Boise, ID 83702

11. Commission.

Buyer and Seller agree that neither has been represented by any broker, finder or other party entitled to a real estate brokerage commission, finder's fee or other compensation. Each Party agrees to indemnify, defend and hold the other Party harmless from and against any commissions, fees or other compensation which is claimed by any third Party with whom the indemnifying Party has allegedly dealt.

12. General.

(a) **Successors.** This Contract shall be binding upon the heirs, successors, assigns and personal representatives of the parties hereto.

(b) **Headings.** Section headings are for convenience only and shall not be deemed to not define, limit or construe the contents of any terms, consents or conditions in this Contract.

(c) **Entire Agreement.** This Contract, together with the exhibits attached hereto, contains the entire agreement between the parties hereto and supersedes all prior understandings and agreements, oral or written, with respect to the subject matter hereof. The provisions of this

List of Exhibits and Schedule

Exhibit "A" Legal Description of Centre Facilities

Exhibit "B" Form of Special Warranty Deed

Exhibit "C" Permitted Exceptions

Exhibit "D" Definitions

EXHIBIT 'C'
PERMITTED EXCEPTIONS

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (this "Agreement") is entered into as of the 19th day of December, 2014, between the Greater Boise Auditorium District, Ada County, State of Idaho, an auditorium district organized and operating under the laws of the State of Idaho (the "District"), created and maintained under the provisions of Title 67, Chapter 49, Idaho Code, as amended, and the Urban Renewal Agency of Boise City, Idaho, aka Capital City Development Corporation (the "Agency"), a public body, corporate and politic, organized and operating pursuant to Title 50, Chapters 20 and 29, Idaho Code. The Agreement amends and restates the Development Agreement entered into between the District and the Agency dated June 9, 2014.

Section 1. Background.

a. The District intends to expand and improve its convention center and public event facilities in downtown Boise (the "Project") to be located within the boundaries of both the District and the Agency.

b. The Project includes (i) renovation of the District's existing convention center facilities (the "Boise Centre"), (ii) construction of a new ballroom facility, related kitchen and ancillary facilities, meeting space and ancillary facilities, and an elevated concourse attaching the District's existing facilities to the new ballroom facility, (iii) purchase of related furniture and equipment, and (iv) improvements to the Grove Plaza, the plaza between the Boise Centre and the building to contain the new ballroom facility. The total estimated cost of the Project is \$38,000,000. The new ballroom facility and related kitchen, as well as the new meeting space and all ancillary facilities, are to be located in new buildings being constructed by KC Gardner Company, L.C. (the "Developer"), who has acquired title to parcels to the south and west of the existing U.S. Bank office tower in close proximity to the District's existing facilities. The parcels are referred to herein as the "South Parcel" and the "West Parcel."

c. The District and the Developer have entered into a Master Development Agreement (the "Master Development Agreement"), whereby the Developer will agree to develop and build to suit the new ballroom facility, related kitchen and ancillary facilities within a new building to be constructed on the South Parcel, such building referred to herein as the "Centre Building," as well as the meeting space and ancillary facilities within a new building to be constructed on the West Parcel, such building referred to herein as the "Clearwater Building." Both the Centre Building and the Clearwater Building will be subject to a condominium regime as set forth in the Condominium Documents as defined in and to be entered into pursuant to the Master Development Agreement. The units containing the new ballroom facility, related kitchen and ancillary facilities and the new meeting space and ancillary facilities will be leased or sold by the Developer to the District.

d. The District intends to seek nonappropriation lease financing for purchase of the portion of the Project containing the new ballroom facility, the related kitchen, and ancillary facilities in the Centre Building, which has an estimated cost of \$19,091,084, plus related soft costs

and equipment, for a total cost of \$21,236,400 (collectively, the "Financed Project") and related reserves and financing costs. The improvements in the Clearwater Building are not included in the Financed Project. To facilitate the financing of the Financed Project, the District has requested that the Agency utilize its statutory powers and further its public purposes by issuing a promissory note[s] or similar instrument (the "Note") on the District's behalf, to be repaid by the Agency solely from lease payments payable by the District to the Agency (the "Lease Payments") in the amount of the principal and interest coming due on such Note under an annual appropriation lease of the Financed Project (the "Lease Agreement").

e. The District intends to utilize its annual receipts from hotel/motel room tax collections and annual revenues from its existing facilities (the "Revenues") as the sole source of payment of annual Lease Payments for the Financed Project.

f. The objective of this Agreement is to document and to facilitate the achievement of the parties' present intentions with respect to (i) the development of the Financed Project; (ii) the execution and delivery of the Lease Agreement and the issuance of the Note with respect to the Financed Project and related reserves and financing costs; (iii) provision for payment of cost and expenses; and (iv) the required court approval of the financing.

Section 2. Disposition of the Financed Project/ Purchase Agreement.

In the Master Development Agreement, the Developer has agreed to build the Financed Project to suit and then sell the same to the District for an agreed purchase price. To that end, upon satisfaction of certain conditions, including agreement on the final design and guaranteed maximum price, which is estimated to occur in June 2015, the District anticipates entering into a Purchase Agreement in the form attached to the Master Development Agreement (the "Purchase Agreement") providing for the acquisition of the Financed Project from the Developer. The District hereby agrees to assign the Purchase Agreement to the Agency pursuant to an Assignment and Assumption Agreement in the form attached hereto as Exhibit A (the "Assignment"). The Agency hereby agrees to accept assignment of the Purchase Agreement and purchase the Financed Project following satisfaction of the conditions in the Master Development Agreement, successful completion of the Judicial Confirmation Proceedings (as hereinafter defined) and issuance of the Note, and thereby the Agency shall become the owner of the Financed Project.

In the event the Financed Project is completed prior to the successful completion of the Judicial Confirmation Proceedings, the District may purchase the Financed Project from the Developer pursuant to the Purchase Agreement with District reserves. In the event the District purchases the Financed Project, upon successful completion of the Judicial Confirmation Proceedings and issuance of the Note, the Agency will purchase the Financed Project from the District using Note proceeds and lease it to the District pursuant to the Lease Agreement.

Section 3. Financing of the Project.

a. Judicial Confirmation Proceedings. The parties understand and agree that a judicial validation of the non-appropriation lease financing structure will be required as a condition to the successful completion of the financing. Thus, the Agency agrees to cooperate with the

District in a petition for judicial validation, to be brought pursuant to Chapter 13 of Title 7, Idaho Code, to seek court approval as to the legal validity of the proposed financing (the “**Judicial Confirmation Proceedings**”). The District shall oversee the Judicial Confirmation Proceedings and such proceedings will be funded in accordance with Section 5 herein. Such proceedings shall clearly describe the roles and relationship of the parties with regard to the financing of the Financed Project and related reserves and financing costs.

b. Note. Upon successful completion of the Judicial Confirmation Proceedings, the District intends to request and upon such request the Agency shall issue the Note in an amount sufficient to provide funds to purchase the Financed Project and fund related reserves and financing costs. The proceeds from sale of the Note shall be used by the Agency to purchase the Financed Project and fund related reserves and financing costs. The timing of the closing of Note shall be directed by the District.

c. Lease Revenues. Upon successful completion of the Judicial Confirmation Proceedings, and prior to or contemporaneously with the sale of the Note, the District shall enter into the Lease Agreement with the Agency, and the District will pay Lease Payments from the Revenues sufficient to pay principal and interest due on the Note, subject to the District's determination, in its discretion, to annually renew the Lease Agreement. A draft version of the Lease Agreement is attached hereto as Exhibit B.

d. Selection of Finance Professionals. The Parties agree on the identity and roles of the following financing participants and agree to cooperate to identify and select other participants as needed:

- (i) Hawley Troxell Ennis & Hawley LLP will act as note counsel to the District (“**Note Counsel**”) and will issue unqualified legal opinions on the validity of the Lease Agreement and on the validity and tax exemption of the Note;
- (ii) Sherman & Howard L.L.C. will act as special finance counsel to the Agency;
- (iii) Piper Jaffray & Co., which has an existing contract with the Agency, will serve as financial advisor to the Agency (“**Agency's Financial Advisor**”) and will provide services to the District upon request that relate to structuring the Lease Payments and other terms of the Lease Agreement that will enhance the marketability of the Note;
- (iv) the District may, but is not required to, engage its own financial advisor at its own expense; and
- (v) the District, in consultation with its own financial advisor, if any, Piper Jaffray & Co. and the Agency, shall determine the manner of sale of the Note and select through such process, as they shall agree, one or more underwriters for the Note if sold in a public offering, or institutional investors if the Note is sold in a limited offering.

e. Private Placement. In the event the District and the Agency pursue a private placement for the Note, the District and the Agency agree to place the Note with an entity or entities that would qualify as a bank, a qualified institutional buyer, or an accredited investor. Such purchaser of the Note shall be capable of providing an acceptable letter or certificate indicating that the purchaser is experienced in transaction such as those related to the Note and that the purchaser is knowledgeable and fully capable of independently evaluating the risk involved in investing in the Note. Further, should the purchaser determine, subsequent to its purchase of the Note, to sell, assign, or transfer the Note, any such sale, assignment or transfer shall be made under those same conditions constituting what is referred to as a "traveling letter".

Section 4. Construction of the Project. The District will work with the Developer to manage the construction and development of the Financed Project.

Section 5. Expenses Fund. The District hereby agrees to presently budget and commit \$123,000 in a fund to be called the "Expenses Fund" to be held by the District as the sole source of payment for all reasonable and necessary out-of-pocket costs, expenses and fees, incurred by the Agency from June 9, 2014 through the effective date of the Lease directly in connection with the issuance of the Note and the Financed Project, as detailed below.

The District shall not be required to pay for any expenses hereunder in excess of the stop amounts set forth below unless the Agency first obtains the District's prior written consent to incur such excess expenses and additional funds are budgeted and committed therefor:

<u>Expense</u>	<u>Stop Amount</u>
Sherman & Howard L.L.C. (Agency Note Counsel)	\$15,000
Piper Jaffray & Co. (Agency Financial Advisor)	\$63,500
Elam & Burke (Agency General Counsel)	\$40,000
All other Agency incurred expenses	\$ 5,000

The Agency shall provide to the District a monthly accounting of all expenses to be paid from the Expenses Fund. The District shall pay all such amounts owed to parties from amounts held in the Expenses Fund as directed by the Agency within thirty (30) days of being billed for the same, unless the District disputes such expenses. In the event of a dispute, the Executive Director of the District and the Executive Director of the Agency shall meet and attempt to resolve the dispute. In the event the dispute is not resolved by the Executive Directors, the Boards of the District and the Agency shall meet to resolve the dispute. Any amounts due after resolution of a dispute shall be paid within thirty (30) days of such resolution.

The provisions of this Section shall survive for thirty (30) days beyond the termination of this Agreement, and if funds remain in the Expenses Fund thirty (30) days after the termination of this Agreement, such funds shall be released to the District

The District shall pay directly, and not from the Expenses Fund, the fees of Bond Counsel, the District's counsel, and the District's financial advisor, if applicable.

Section 6. Contingency Fund. The District hereby agrees to presently budget and commit \$250,000 in a fund to be called the "Contingency Fund" to be held as the sole source of payment for reasonable attorneys' fees, costs and expenses of the Agency, including insurance premiums for new policies carried and insurance deductibles relating specifically to the Project, for all claims for bodily injury and property damage, other than property insured, made against the Agency that arise from the negligent acts or omissions of the District. The Agency and the District agree to seek and use insurance proceeds prior to use of the Contingency Fund.

The Agency shall provide to the District evidence of all expenses to be paid from the Contingency Fund. The District shall pay all such amounts owed to the Agency within thirty (30) days of evidence of such expenses being submitted unless the District disputes such expenses. In the event of a dispute, the Executive Director of the District and the Executive Director of the Agency shall meet and attempt to resolve the dispute. In the event the dispute is not resolved by the Executive Directors, the Boards of the District and the Agency shall meet to resolve the dispute. Any amounts due after resolution of a dispute shall be paid within thirty (30) days of such resolution.

The Contingency Fund shall not survive termination of this Agreement.

Section 7. Default. Time is of the essence. Failure or delay of either party to perform any obligation of such party under this Agreement constitutes a default hereunder; provided, however, that no party shall be deemed to be in breach of this Agreement unless and until such party has received written notice of such default, and has failed to remedy its failure to perform its obligations therein specified for a period of thirty (30) days.

Section 8. Remedies on Default. Both parties shall have all remedies at law and in equity. The rights and remedies of the parties hereunder are cumulative, and exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by any other party.

Section 9. Term. This Agreement shall be effective until the earliest of the date the Lease Agreement is effective or five (5) years from the date of execution. No provision of this Agreement shall survive termination of this Agreement, except Section 5 which shall survive for thirty (30) days beyond the termination of this Agreement.

Section 10. Miscellaneous Provisions.

a. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered mail, postage prepaid, addressed as follows: if to the Agency, at Capital City Development Corporation, 121 N. 9th, Suite 501, Boise, ID 83702, Attention: Executive Director; if to the District, at Greater Boise Auditorium District, 850 W. Front Street, Boise, ID 83702, attention: Executive Director. The Agency and the District may, by notice hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

b. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Agency, the District and their respective successors and assigns, subject, however, to the limitations contained herein.

c. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

d. Amendments, Changes and Modifications. This Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the Agency and the District.

e. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument, and all of which constitute the entire understanding and agreement of the parties relative to the subject matter hereof.

f. Governing Law. This Agreement shall be governed and construed in accordance with the law of the State of Idaho.

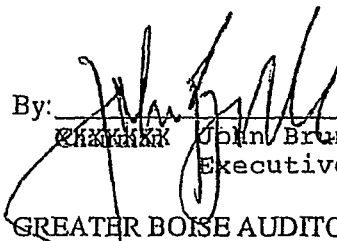
g. Good Faith and Cooperation. It is agreed by the Agency and the District that it is in their mutual best interest and the interest of the public that the Project be financed and developed as herein contemplated, and, to that end, the parties shall in all instances cooperate and act in good faith in compliance with the terms, covenants and conditions of this Agreement and each shall deal fairly with the other.

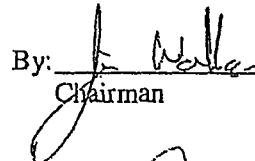
h. No Third Party Beneficiaries. This Agreement is made for the sole benefit of the Agency and the District, and no other person or persons shall have rights or remedies hereunder. The Agency shall owe no duty to any claimant for labor performed or material furnished with respect to the Project.

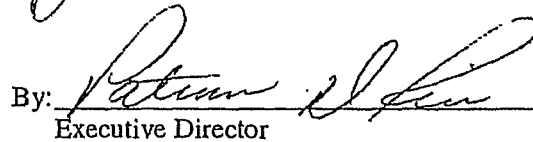
[Signatures appear on following page]

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year hereinabove first written.

URBAN RENEWAL AGENCY OF BOISE CITY,
IDAHO, AKA CAPITAL CITY DEVELOPMENT
CORPORATION

By: 
Chairman John Brunelle
Executive Director
GREATER BOISE AUDITORIUM DISTRICT

By: 
Chairman

By: 
Executive Director

Appeal
Office
5/28/15
LH

NO. _____
A.M. _____ P.M. 3/4
MAY 28 2015

JOHN L. RUNFT (ISB # 1059)
JON M. STEELE (ISB # 1911)
RUNFT & STEELE LAW OFFICES, PLLC
1020 W. Main Street, Suite 400
Boise, Idaho 83702
Phone: (208) 333-8506
Fax: (208) 343-3246
Email: JRunft@runftsteele.com

CHRISTOPHER D. RICH, Clerk
By **TENILLE GRANT**
DEPUTY

Attorneys for David Frazier

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

IN THE MATTER OF:)
	) Case No. CV OT 1423695
GREATER BOISE AUDITORIUM)
DISTRICT,	) STIPULATION FOR FURTHER
	) ADDITIONS TO CLERK'S RECORD ON
Petitioner.	) APPEAL PURSUANT TO I.A.R. 19(c) AND
	) 28(c)
_____)

Petitioner, Greater Auditorium District (the "Petitioner"), and respondent, David R. Frazier (the "Respondent"), by and through their respective attorneys of record, hereby stipulate and agree as follows:

1. The inclusion in the Clerks Record on appeal of Respondent's (highlighted) exhibit introduced for illustrative purposes at the February 25, 2015 hearing on Petitioner's Request for Judicial Confirmation, attached to Respondent's *Motion for Further Additions to The Clerk's Record on Appeal Pursuant to I.A.R. 19(c) and 28(c)*.

This was the only exhibit introduced at said hearing.

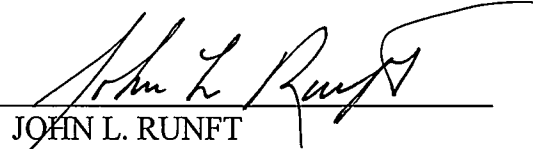
ORIGINAL
000694

TG

DATED this 29th day of May, 2015.

RUNFT & STEELE LAW OFFICES, PLLC

By: _____


JOHN L. RUNFT

Attorney for Respondent David Frazier

By: _____

DONALD E. KNICKREHM

Attorney for Petitioner

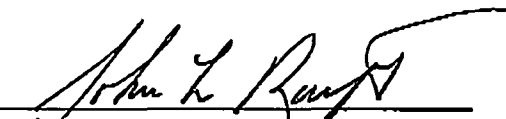
By: _____

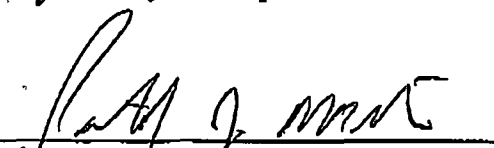
NICHOLAS G. MILLER

Attorney for Petitioner

DATED this 28th day of May, 2015.

RUNFT & STEELE LAW OFFICES, PLLC

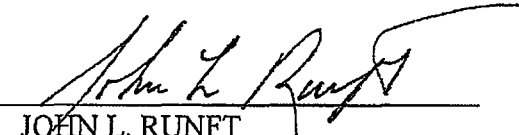
By: 
JOHN L. RUNFT
Attorney for Respondent David Frazier

By: 
DONALD E. KNICKREHM
Attorney for Petitioner

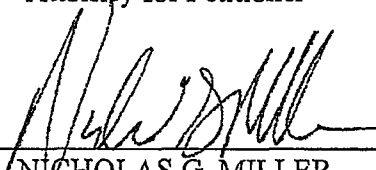
By: _____
NICHOLAS G. MILLER
Attorney for Petitioner

DATED this 28th day of May, 2015.

RUNFT & STEELE LAW OFFICES, PLLC

By: 
JOHN L. RUNFT
Attorney for Respondent David Frazier

By: _____
DONALD E. KNICKREHM
Attorney for Petitioner

By: 
NICHOLAS G. MILLER
Attorney for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 28th day of May 2015, a true and correct copy of the foregoing **STIPULATION FOR FURTHER ADDITIONS TO CLERK'S RECORD ON APPEAL PURSUANT TO I.A.R. 19(c) AND 28(c)**, was served upon opposing counsel as follows:

Chris Meyer
Pat Miller
Givens Pursley LLP
601 W. Bannock St.
Boise, ID 83702
F: (208) 388-1300

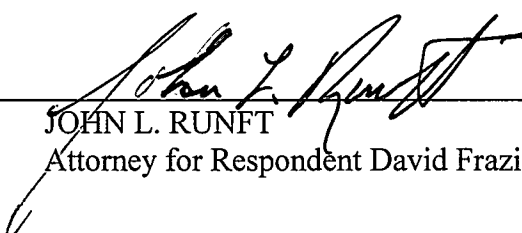
☒ US Mail
☐ Personal Delivery
☐ Facsimile

Nicholas G. Miller
S.C. Danielle Quade
Hawley Troxell Ennis & Hawley LLP
877 W. Main St., Suite 1000
Boise, ID 83702-5883
F: (208) 954-5285

☒ US Mail
☐ Personal Delivery
☐ Facsimile

RUNFT & STEELE LAW OFFICES, PLLC

By: _____


JOHN L. RUNFT

Attorney for Respondent David Frazier

RECEIVED

MAY 28 2015

JOHN L. RUNFT (ISB # 1059)
JON M. STEELE (ISB # 1911)
RUNFT & STEELE LAW OFFICES, PLLC
1020 W. Main Street, Suite 400
Boise, Idaho 83702
Phone: (208) 333-8506
Fax: (208) 343-3246
Email: JRunft@runftsteele.com

Attorneys for David Frazier

NO. 9:25 FILED
A.M. 9:25 P.M.

JUN 12 2015

CHRISTOPHER D. RICH, Clerk
By JANINE KORSEN
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF:)
GREATER BOISE AUDITORIUM) Case No. CV OT 1423695
DISTRICT,)
Petitioner.) **ORDER GRANTING FURTHER**
) **ADDITIONS TO THE CLERK'S RECORD**
) **ON APPEAL PURSUANT TO I.A.R. 19(c)**
) **AND 28(c)**
)

The Court having reviewed Respondent's *Motion for Additions to The Clerk's Record on Appeal Pursuant to I.A.R. 19(c) and 28(c)* filed on May 12, 2015, Respondent's *Motion for Further Additions to The Clerk's Record on Appeal Pursuant to I.A.R. 19(c) and 28(c)*, filed herewith, and the *Stipulation for Additions to the Clerk's Record on Appeal Pursuant to I.A.R. 19(c) and 28(c)*, also filed herewith, and being fully advised and good cause appearing herein,

IT IS HEREBY ORDERED THAT the following further additions be made to the Clerk's Record in the appeal of this matter:

1. The inclusion in the Clerks Record on appeal of Respondent's (highlighted) exhibit introduced for illustrative purposes at the February 25, 2015 hearing on Petitioner's Request for Judicial Confirmation, attached to Respondent's *Motion for Further*

ORDER GRANTING FURTHER ADDITIONS TO THE CLERK'S RECORD ON APPEAL
PURSUANT TO I.A.R. 19(c) AND 28(c)- Page 1

000699

Additions to The Clerk's Record on Appeal Pursuant to I.A.R. 19(c) and 28(c). This was the only exhibit introduced at said hearing.

DATED this 11th day of June, 2015.

By: 
HONORABLE LYNN NORTON
District Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 12th June day of ~~May~~ 2015, a true and correct copy of the foregoing **ORDER GRANTING FURTHER ADDITIONS TO THE CLERK'S RECORD ON APPEAL PURSUANT TO I.A.R. 19(c) AND 28(c)**, was served upon counsel for the parties as follows:

Chris Meyer
Pat Miller
Givens Pursley LLP
601 W. Bannock St.
Boise, ID 83702
F: (208) 388-1300

☒ US Mail
☐ Personal Delivery
☐ Facsimile

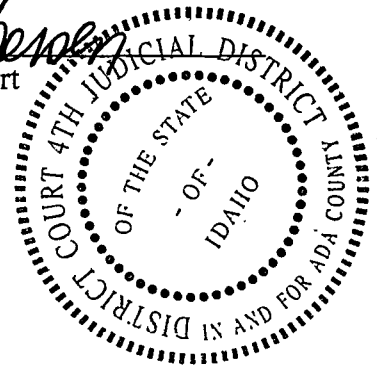
Nicholas G. Miller
S.C. Danielle Quade
Hawley Troxell Ennis & Hawley LLP
877 W. Main St., Suite 1000
Boise, ID 83702-5883
F: (208) 954-5285

☒ US Mail
☐ Personal Delivery
☐ Facsimile

John L. Runft
Runft & Steele Law Offices, PLLC
1020 W. Main St. Suite 400
Boise, Idaho 83702
F: (208) 343-3246

☒ US Mail
☐ Personal Delivery
☐ Facsimile

By: *Jamie Horner*
Clerk of the Court



IN THE SUPREME COURT OF THE STATE OF IDAHO

NO. _____
A.M. 10:48 P.M. FILED

JUN 12 2015

CHRISTOPHER D. RICH, Clerk
By KELLE WEGENER
DEPUTY

IN THE MATTER OF:)
)
THE GREATER BOISE AUDITORIUM)
District,)
) Case No. CV-OT-14-23695
Petitioner-Appellant,)
)
vs.)
)
DAVID R. FRAZIER,)
)
Respondent.)

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on May 26th, 2015, I lodged a transcript 76 pages in length for the above-referenced appeal with the District Court Clerk of Ada County in the Fourth Judicial District.

Penny L. Tardiff

(Signature of Reporter)
Penny L. Tardiff, CSR

5/26/2015

Hearing Date: February 25, 2015

000702

KW

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF:

THE GREATER BOISE AUDITORIUM
DISTRICT,

Petitioner-Appellant,

vs.

DAVID R. FRAZIER,

Respondent.

Supreme Court Case No. 43074

CERTIFICATE OF EXHIBITS

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the course of this action.

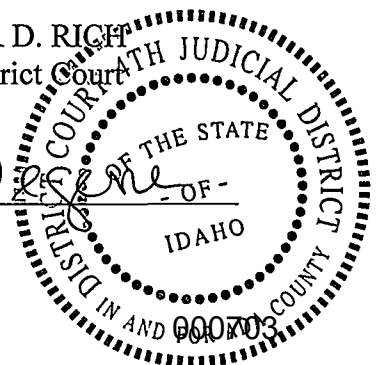
I FURTHER CERTIFY, that the following documents will be submitted as EXHIBITS to the Record:

1. Petition for Judicial Confirmation, Ada County Case No. CV-OT-2014-11320, filed June 11, 2014.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 12th day of June, 2015.

CHRISTOPHER D. RICH
Clerk of the District Court

By [Signature]
Deputy Clerk



CERTIFICATE OF EXHIBITS

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF:

THE GREATER BOISE AUDITORIUM
DISTRICT,

Petitioner-Appellant,

vs.

DAVID R. FRAZIER,

Respondent.

Supreme Court Case No. 43074

CERTIFICATE OF SERVICE

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

CHRISTOPHER H. MEYER

ATTORNEY FOR APPELLANT

BOISE, IDAHO

JOHN L. RUNFT

ATTORNEY FOR RESPONDENT

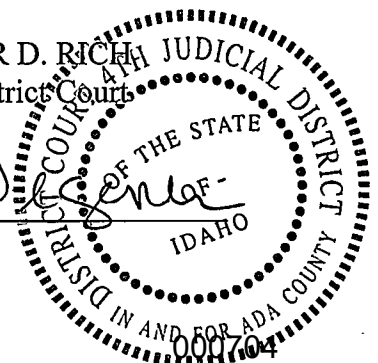
BOISE, IDAHO

Date of Service: JUN 12 2015

CERTIFICATE OF SERVICE

CHRISTOPHER D. RICH
Clerk of the District Court

By [Signature]
Deputy Clerk



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF:

THE GREATER BOISE AUDITORIUM
DISTRICT,

Petitioner-Appellant,

vs.

DAVID R. FRAZIER,

Respondent.

Supreme Court Case No. 43074

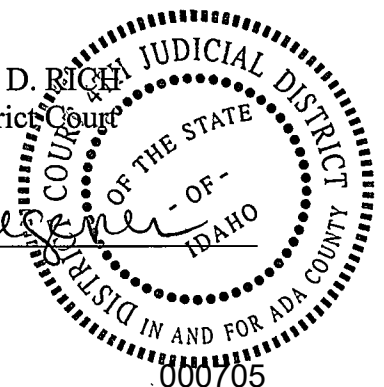
CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled under my direction and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsel.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 24th day of April, 2015.

CHRISTOPHER D. RICH
Clerk of the District Court

By KWessner
Deputy Clerk



CERTIFICATE TO RECORD